Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Court of International Trade

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This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 82-36)

Source Materials—Stoichiometric Substitution Under 19 U.S.C. 1313(b)

Under the drawback law (19 U.S.C. 1313(b)) drawback contracts have been approved since 1958, permitting the substitution of one domestic compound for a different imported compound when an identical element is sought for use in manufacturing an exported article. Thus, if copper is the element sought the substitution of cuprite (Cu_2O) for chalcacite (Cu_2S) would be permitted.

Until recently most ores, scrap, etc. were dutiable at specific rates based on the amount of metallic element sought by the processor. Therefore, designation for drawback purposes was based on a pound-for-pound basis with no problems involved.

A problem has been created through the shift from specific rates of duty, e.g. 25¢ per pound on tungsten content, to ad valorem and/or compound rates of duty. These changes resulted from the Tokyo Round talks preparatory to the General Agreement on Tariff and Trade. The problem arises because we have required in drawback proposals language to the effect that if the domestic material were imported, it would be subject to the same rate of duty as the imported merchandise. As a matter of course, applicants have been including this language in their proposals, even though the language is inappropriate or incorrect resulting in the applicants' being unable to adhere to their contracts.

Same kind and quality does not of course depend on the tariff schedules and never has. Often items classified under the same tariff provision and subject to the same duty are not the same kind and quality and *vice versa*.

It is clear from the House Report and Senate Report 2165 (1958 U.S. Code Cong. and Adm. News p. 3575) prepared in connection with P.L. 85-673, that a practical approach to the substitution provision was to be taken to relieve domestic processors and fabricators of imported dutiable merchandise, *in competing for export markets*, of the disadvantages which the duties on the imported merchandise would

otherwise impose upon them (Emphasis added, see H. Rept. 1380, p. 2). To require drawback manufacturers using stoichiometric materials to segregate or account for individually the various different source materials used to obtain the essential element would be impractical and not in accord with the intent of the drawback law. Thus, substitution is allowed of primary source materials to obtain a sought element even though the domestic material would be subject to a rate of duty if imported different from that assessed on the designated merchandise, if use of the different materials does not require significant change in the manufacturing process. Designation is to be made on a pound-for-pound basis for the desired element.

Dated: February 26, 1982.

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 82-37)

Revision of Customs Criteria for Establishing Ports of Entry and Stations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice is to advise municipalities, local governments, civic organizations, and other interested parties that Customs has revised the criteria it uses in determining whether to grant requests for the establishment of Customs ports of entry and stations. The new criteria, which are set forth in this document, modify and expand upon certain unpublished workload criteria which Customs has followed since 1973 in evaluating port of entry requests. They represent an increase in the workload levels formerly used in evaluating these requests. By using the revised criteria, Customs will obtain the most efficient use of its personnel, facilities, and resources and provide improved service to carriers, importers, and the public.

EFFECTIVE DATE: March 9, 1982

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Customs Service has primary responsibility for: (1) collecting revenue (including customs duties, excise taxes, fees and penalties) due on imported merchandise; (2) processing persons, cargo, baggage, and mail entering the United States from foreign countries; (3) enforcing import and export prohibitions to protect the general welfare and security of the United States; and (4) collecting international trade statistics.

Individuals, vehicles, and merchandise generally enter the United States through established Customs ports of entry and stations. During Fiscal Year 1979, more than 271 million persons, 81 million automobiles, trucks, and buses, 558,714 aircraft, and 227,364 ships entered the United States. In addition, Customs processed over 4. million formal entries to collect approximately $8 billion in duty and taxes on more than $218 billion of imported merchandise.

CUSTOMS PORTS OF ENTRY

Customs ports of entry are places (seaports, airports, or land border ports) designated by the Secretary of the Treasury where Customs officers or employees are assigned to accept entries of merchandise, clear passengers, collect duties and enforce the various provisions of Customs and related laws.

The Secretary of the Treasury is advised by the Commissioner of Customs in matters affecting the establishment, abolishment, or other change in ports of entry. The Commissioner coordinates these matters with other Federal inspection agencies, and, when appropriate, with Canadian or Mexican officials. Staffing at ports of entry may range from one to several hundred employees, depending upon the volume of business. However, most new ports of entry are staffed by at least a port director, one or more inspectors, and a secretary.

Customs ports of entry are established under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR, 1949–1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449).

CUSTOMS STATIONS

Customs stations are places other than ports of entry where Customs officers or employees are stationed to enter and clear vessels and other carriers, accept entries of merchandise, examine baggage,

collect duties, and enforce the various provisions of Customs and related laws. Stations may be established or terminated by the Commissioner of Customs.

The significant difference between ports of entry and stations is that at stations, the Federal Government is reimbursed for:

(1) The salaries and expenses of its officers or employees for services rendered in connection with the entry and clearance of vessels; and, except as otherwise provided by the Customs Regulations,

(2) The expenses (including any per diem allowed in lieu of subsistence) but not the salaries of its officers or employees for services rendered in connection with the entry or delivery of merchandise.

Because the cost of services provided at stations must be reimbursed to the Federal Government while the cost of services provided at ports of entry is not, Customs receives fewer requests for the establishment of stations. However, the criteria for establishing ports of entry also are applicable to stations. Of course, the potential volume of the workload at a station would be less.

Customs stations are established under the authority of section 1, 37 Stat. 434, section 301, 80 Stat. 379; 5 U.S.C. 301, 19 U.S.C. 1

INCREASED DEMAND FOR SERVICE

The ability of modern air carriers to transport larger passenger and cargo loads longer distances has prompted demands for additional Customs service throughout the United States. Because Federal inspection facilities at many major airports are overworked, modern air carriers would operate more efficiently by proceeding directly to their destinations instead of stopping for Customs inspection at intermediate points.

Furthermore, because it is advantageous to inspect containerized cargo at or near its ultimate destination, the increased use of containers to transport cargo also has created a demand for additional service at inland locations.

In addition, congestion at "gateway" ports could be reduced by expanding service in alternate locations and by eliminating the requirement that carriers proceeding inland stop at coastal or land border ports for inspection.

To meet these demands, Customs anticipates that it will be necessary to establish or expand areas of Customs service throughout the country.

PROCEDURE FOR REQUESTING NEW OR EXPANDED SERVICE

There is no formal application for requesting new or expanded Customs service. Generally, however, a recognized civic or government organization such as a chamber of commerce, port authority, or city government, makes a request in writing, including the reason for the request, to the District Director of Customs in the district where the requested facility is or will be located. In order to receive favorable consideration, there must be a sufficient volume of import business (existing and potential) to justify the expense of maintaining an office or expanding service.

Before approving requests for new service, Customs must have the available manpower. Because budget restrictions have curtailed Customs resources, permanent manpower may not be assigned for some time. A new port of entry cannot be entirely staffed by part-time help. However, permanent staffing may be supplemented by part-time employees. These factors should be noted by persons making requests for new service.

CRITERIA

While not absolute, the following criteria should be considered in preparing applications for the establishment of Customs ports of entry and stations.

(1) The requesting community must:

(a) Demonstrate that the benefits to be derived justify the Federal Government expense involved;

(b) Be serviced by at least two major modes of transportation (rail, air, water, or highway); and

(c) Have a minimum population of 300,000 within the immediate service area (approximately a 70 mile radius).

Land border ports are exempt from (b) and (c).

(2) The actual or potential Customs workload (minimum number of transactions per year), in the area must be:

(a) 15,000 international air passengers; or

(b) 2,500 consumption entries (formal (over $250 in Customs value), information (under $250 in Customs value)); or

(c) 150,000 vehicles (for land border ports); or

(d) 2,000 scheduled international aircraft arrivals (passengers and/or cargo); or

(e) 350 cargo vessel arrivals; or

(f) Any appropriate combination of the above.

(3) Facilities (provided without cost to the Federal Government in most cases) must include:

(a) Wharfage and anchorage adequate for oceangoing cargo/passenger vessels (if a water port);

(b) Cargo and passenger facilities;

(c) Warehousing space for the secure storage of imported cargo pending final Customs inspection and release; and

(d) Administrative office space, cargo inspection areas, primary and secondary inspection rooms and areas, storage areas, and other space necessary for regular Customs operations. Land border inspection stations are provided by the Federal Government.

In addition, Customs must obtain the concurrence of other Federal inspection agencies and ensure that the facility requirements of these agencies are met. Customs also must obtain agreements from Mexican and Canadian officials to establish inspection facilities opposite proposed U.S. ports at land border inspection stations.

APPLICABILITY OF 5 U.S.C. 553

These criteria shall be used in determining whether to grant requests for establishing or expanding areas of Customs Service. Following a decision to grant such a request, any proposed change in the field organization of the Customs Service must be made in accordance with the notice, comment, and delayed effective date provisions of 5 U.S.C. 553.

DRAFTING INFORMATION

The principal author of this document was Lawrence P. Dunham, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

WILLIAM T. ARCHEY,
Commissioner of Customs.

Approved: February 17, 1982.

JOHN P. SIMPSON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register Mar. 9, 1982 (47 FR 10137)]

U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER of CUSTOMS,
Washington, D.C.

The following are decisions made by the United States Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

JOHN P. SIMPSON,
Director,
Office of Regulations and Rulings.

(C.S.D. 82-41)

Classification: Child's Quilted Short Length Jacket—Commonly Referred To as a Ski Jacket

Date: August 13, 1981
File: CLA-2 CO:R:CV:G
068191 PR

DISTRICT DIRECTOR OF CUSTOMS,
Seattle, Washington

DEAR SIR: This is in reply to your Request For Internal Advice No. 7/81, dated December 2, 1980, file CLA-2-03:D:CV, concerning the tariff status of quilted ski garments.

Issues: The issues presented by the subject inquiry are (1) whether the outer shell fabric on the subject garments is coated or filled for tariff purposes; (2) whether garments which have quilting stitching on the outer shell fabric are classifiable under the provision for garments designed for rainwear, hunting, fishing, or similar uses, wholly or almost wholly of fabrics which are coated or filled with rubber or plastics material, in item 376.56, Tariff Schedules of the United States (TSUS); and (3) whether, in order to be classifiable in item 376.56, all seams on a garment must be sealed to prevent water seepage.

Facts: The sample which was submitted to this Headquarters is a child's size seven quilted short length jacket of the type commonly referred to as ski jackets. It has a self-hood with a drawstring closure,

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long sleeves with knit cuffs, a knit 2¾ inch wide waistband, a pointed collar, a full front zippered opening which extends all the way to the collar points, and two front zippered inserted pockets.

Stitched into the left side seam, approximately 1¾ inches above the top of the waistband, is a textile fabric label. The label is folded over on itself and acts as a fabric tab holding a metal triangle of the type used on ski jackets to attach lift passes and ski gloves. The visible portion of that label is approximately ⅜ inch wide and ¾ inch long. The metal triangle is not functional on this garment. The black label contains the words "Ski Stuff" in white letters which are woven into that label. The two S's are oversized and stylized. The S's, the k, and the i are thicker than the remaining letters. In addition, the i is much larger than the u. The arrangement of the letters and the two words on the label present a decorative appearance.

The jacket is composed of three layers of material. It has a woven lining of man-made fiber fabric, a middle batting layer of nonwoven man-made fibers, and a woven outer shell of man-made fibers. The outer shell fabric is stated to be made of a 210 count nylon with a polyurethane coating. The outer shell consists of numerous pieces of fabric that have been pieced together to form a decorative design. Corded piping has been inserted in some of the seams. When viewing the garment from either the front or the rear, it gives the appearance of three large blue V's, separated by three narrow orange-colored V's (the piping), bordered on the bottom and on most of the sides (about ¾ of each sleeve) by orange fabric which is a different shade of orange than the piping. Quilting stitching running through all three layers comprising the garment has been applied adjacent to each of the seams into which the piping has been inserted.

Swatches of the same fabric as the outer shell material, in their coated and uncoated conditions, were submitted. The swatch of the coated fabric is somewhat stiffer than the uncoated fabric in that it does not bend quite as easily. In addition, the inner surface of the outer shell material on the garment, where the plastics material has been applied, has a shiny or glossy appearance which the outer surface does not have. In the absence of evidence to the contrary, we will assume that this shiny or glossy appearance is imparted solely by the addition of the plastic material.

Law and analysis: By the very wording of the superior heading to item 376.56, in order for a garment to be classified under that tariff provision, it must be (1) designed for rainwear, hunting, fishing, or similar uses, and (2) wholly or almost wholly of fabrics which are coated or filled with rubber or plastics.

In order to be considered coated or filled for tariff purposes, Headnote 2(a), Subpart 4C, TSUS, requires that the coating or filling

material visibly and significantly affect the surface or surfaces of the fabric to which it has been applied otherwise than by a change in color. The United States Customs Court held in *H. Rosenthal Co.* v. *United States*, 81 Cust. Ct. 77, C.D. 4769 (1978), aff'd C.A.D. 1236 (1979), that a fabric which was visibly stiffer after the addition of a plastics material, even though that material was not visible by ocular inspection, was coated or filled within the requirement of Headnote 2(a). In accordance with the holding in that case, and because of the shiny or glossy appearance on the inner surface of the outer shell material, we conclude that the outer shell fabric from which the instant garment is constructed is coated or filled for tariff purposes.

The question then derives as to whether the instant garment is *designed* for rainwear, hunting, fishing, or similar uses. The position is advanced that the garment is specially designed as ski wear, which is a use similar to hunting or fishing. It is recognized that some very young children do ski, however, it does not appear that the jacket in question has any special features that make it identifiable as being designed especially for wear while skiing. While some of its design features allow the jacket to be used for skiing, those same features are common with many similar good quality short length cold weather jackets which are not advertised or sold as ski wear. The location of the metal triangle makes it highly unlikely that it would be used to attach ski gloves because of their bulk, or ski or lift passes because they would not be readily visible. Accordingly, we conclude the instant jacket is not within the class of garments which are designed for hunting, fishing, or similar uses.

In *A. N. Deringer, Inc.* v. *United States*, 66 Cust. Ct. 378, C.D. 4218 (1971), the United States Customs Court held that certain children's snow suits which were coated or filled or laminated with rubber or plastics material on the inner surface of the outer shell fabric were classifiable in item 376.56. The Customs Service has, since the *Deringer* case, classified all long sleeve outer garments with outer shells which were coated or filled for tariff purposes in item 376.56. However, one of the requirements which Customs imposed on those garments was that they be, in fact, waterproof.

The Customs Service has consistently ruled that in order to be classifiable under the provision for rainwear, garments must pass the Customs cup test. See CSD 79–302; Headquarters Ruling 054918, dated April 13, 1979; Headquarters response to Internal Advice Request No. 221/79, HR 061838, dated January 30, 1978; and HR 065050, dated September 7, 1980. This position is supported by *United States* v. *D. H. Grant & Co.*, 47 CCPA 20, C.A.D. 723 (1964),

which held that fabric that passed the Customs cup test is substantially impervious to water for tariff purposes and that any other tests are irrelevant. While the holding in *Grant* involves a determination of whether the merchandise was classifiable as waterproof cloth under the Tariff Act of 1930, as amended, in view of the legislative history, the language of that case is applicable to the tariff schedules. The Tariff Classification Study, Explanatory and Background Materials, Schedule 3, dated November 15, 1960, contains the following language on page 134:

> The provision for waterproof cloth has been controversial over the years. It has been interpreted as including certain fabrics which are not coated or filled within the meaning ascribed to that term in this subpart (CAD 723). The effect of the court holding so-called water-repellant fabrics to be within this provision in paragraph 907 has been carefully studied, and it does not seem desirable or feasible to establish a classification of fabrics on the basis of water-repellancy unassociated with a coating or filling concept. The provisions for waterproof cloth, therefore, have been assimilated with coated or filled fabrics in item 355.65.

The importer's representative has strongly urged that Customs should not apply the cup test to determine whether garments are classifiable in item 376.56. We have carefully reviewed that submission and our prior rulings and are convinced that the cup test remains a valid test in this area.

However, we do believe that a close reading of the concerned tariff provisions requires a slight modification of our prior holdings with reference to the applicability of the cup test. While our prior rulings refer to the *garments* in question having to pass the cup test, it is noted that the superior heading to the concerned tariff provision requires that the garments be wholly or almost wholly of *fabrics* which are coated or filled with rubber or plastics. Since these garments are not "wholly of" the coated fabrics, in order for them to be "almost wholly of" those fabrics, the fabrics must, pursuant to General Headnote 9(f)(iii), TSUS, impart the essential character to the article. Therefore, it is the coated or filled fabric from which the garment is made that must pass the Customs cup test and not the garment as a whole.

If the fabric forming the exterior of a garment passes the cup test prior to its being made into the garment, that fabric is considered waterproof for tariff purposes. While that is a strong indication that the garment is, in fact, designed for rainwear, or similar uses, it is not determinative. Other factors must be considered. One of those other factors is the amount of water-repellency and protection which the garment affords the wearer.

We are quite aware that very few, if any, of the garments previously classified in item 376.56, by the Customs Service had seams which

were sealed to prevent water seepage. This is because such a procedure is quite expensive and usually reserved for specialized garments. The Customs Service does not believe that Congress intended for a manufacturer to go to the added expense of sealing the normal and usual seams in a garment in order for that garment to qualify for classification in item 376.56. However, where a manufacturer purposely introduces additional seams and stitching for the purpose of creating a decorative effect or appearance, Customs believes that a substantial question exists as to whether that garment is, in reality, *designed* for rainwear or similar uses. Obviously, every additional seam added to the exterior shell of a garment and every line of quilting stitching added to that same shell lessens that garment's water-repellency properties. The addition of quilting stitching, in particular, renders that portion of the garment much less water resistant.

Accordingly, the Customs Service believes that an outer garment with quilting stitching through its outer shell has had its water-resistancy properties reduced to the extent that the waterproof fabric from which that garment is made no longer supplies the single essential character to that garment. Therefore, if the garment which is the subject of this ruling were truly *designed* for rainwear or similar uses, the manufacturer would not have added the extra seams and the quilting stitching, both of which reduce the effectiveness of the waterproof fabrics.

Holding: Based on the foregoing, the instant merchandise is not classifiable in item 376.56, TSUS, but, rather, is classifiable under the provisions for other wearing apparel. In view of the decorative appearing label in the side seam of the garment, it is our view that the garment is ornamented for tariff purposes and is, therefore, classifiable in either item 380.04, TSUS, if identifiable as being designed for wear by boys, or, if otherwise, in item 382.04, TSUS.

A copy of this ruling should be furnished to the importer's representative. The submitted sample is being returned under separate cover.

(C.S.D. 82–42)

Vessel Repairs: Single Acts of Negligence of Crewmembers Will Be Considered "Other Casualties" Within the Meaning of 19 U.S.C. 1466(d)(1)

Date: October 22, 1981
File: VES–13–18–CO:R:CD:C
105289 JL

This is in reference to your letter of July 31, 1981, addressed to Mr. Abbey, asking that Customs reconsider denials for remission of

vessel repair duties under title 19, United States Code, section 14.66(d)(1) (19 U.S.C. 1466(d)(1)), assessed on repairs to the (vessel name) in March, 1977.

The record discloses that following a denial of relief by the Regional Commissioner of Customs at Baltimore on February 14, 1978, a Petition for Remission, followed by a Request for Reconsideration, and a Protest and Application for Further Review of Protest were, in turn, filed and denied.

We understand your appeal to essentially advance two propositions, to wit, that it is not clear that a responsible member of the crew (that is, an officer) was negligent in this case; and notwithstanding that an officer may have been negligent, a single incident of officer negligence is a policy that works against the purpose of the vessel repair statute.

Regarding the first proposition, the file discloses that the Chief Engineer of the vessel in his narrative statement of the incident leading to the damages dated March 8, 1977, stated that the Chief Mate started to transfer ballast at a time when a bilge suction valve was dismantled. This led to a flooding of the engine room bilge which was the cause of the damages sustained. It seems clear that if negligence is present under these facts it can be attributed either to the Chief Mate for not ascertaining that the repair work on the bilge valve was completed before opening the ballast valves, or to the personnel who were making the repairs for not communicating to the bridge that the bilge valve was dismantled. The Request for Reconsideration of July 11, 1978, identified those personnel as a junior engineering officer and an unlicensed member of the crew. Therefore, it appears to us that the negligent party was either of two officers. Further, the owner of the vessel admitted in its original petition of March 1, 1978, that officer negligence caused the damage. Under the circumstances, we adhere to our position that officer negligence led to the vessel's damage.

In responding to earlier appeals in this case, we went into much detail on the development of the position that negligent acts of officers which lead to vessel damage are not considered "other casualties" pursuant to 19 U.S.C. 1466(d)(1). (Name) urged us to change our view on single acts of negligence while maintaining the position that continuing acts of negligence of officers and ordinary crewmembers are not remissible as "other casualties." (Name) argument was that we had no precedents for the decision in the (vessel name) case. We believe that we have clearly shown that many precedents for the decision have been issued.

Upon reviewing your letter and the earlier appeals and precedents, it occurred to us to consider whether the application of any distinc-

tion between officers and unlicensed crewmembers, insofar as crew negligence is concerned, is proper in administering subsection 1466(d)(1). Our files indicate that, apart from the development of the so-called "foreseeability doctrine", the first consideration of negligence pertained to a case in which the owner directed his master to overload the deck of the vessel with cargo. The deck collapsed and the question of allowing remission centered, logically, around the negligence of the owner. Remission was denied and subsequent cases built upon that decision in that ships' officers were held to be direct representatives of the owners, that is, the agents of the owners. As you know, this is termed the "principal-agent relationship" which is applied to determine who is to pay damages or be held responsible in various contractual and personal injury disputes. We doubt that the theory has any valid application in remission cases under the vessel repair statute, except in the original collapsing deck case or in other cases where the owner of a vessel is the party causing the damage by direct or indirect means.

Under the facts of the (vessel name) case, it is clear that the owner had no knowledge of, or culpability to any degree in, the damage to the engines, nor is there any way that it could have taken steps to prevent the incident.

After reconsidering this entire problem, we are directing the Regional Commissioner of Customs at Baltimore to allow remission (or refund) of the duties assessed in this case. In the future, single acts of negligence of crewmembers which cause damage to vessels, whether attributable to officers or not, will be considered "other casualties" within the meaning of 19 U.S.C. 1466(d)(1), provided no evidence of owner direction or inducement is present. The petitioner/ship company will retain the burden of showing that the negligent act was committed by an officer or crewmember.

Copies of this decision are being distributed to all Regional Commissioners of Customs.

(C.S.D. 82-43)

Subject: Classification: The Classification in Item 807.00, TSUS, of Certain Bra Straps Imported Into the United States on an Aggregate Basis Is Not Consistent With Section 10.24, Customs Regulations

Date: October 23, 1981
File: CLA-2 CO:R:CV
067525 JTR

DEAR MR. ———: In our letter to you dated April 6, 1981 (068013), we permitted the application of the provisions of item 807.00 of the

Tariff Schedules of the United States (TSUS) on an "aggregated" basis to certain bra straps contained in finished (assembled) bras imported by your client, The ——— Company ("———"). The bra straps in question (identified in our April 6, 1981, letter as the "A" straps) were either made in the United States and shipped abroad for assembly with other bra parts, or were themselves assembled abroad from U.S. components and then assembled with other bra parts, into finished bras.

Upon further consideration of this matter, including a review of the regulations relating to item 807.00 transactions (section 10.11 through 10.24 of the Customs Regulations), we are of the opinion that our decision permitting the provisions of item 807.00 to be applied on an "aggregated" basis was contrary to the applicable regulations. The provisions of section 10.24 of the Customs Regulations require strict physical separation of U.S. and foreign components, as well as records of U.S. components showing for each entry the quantities, sources, costs, dates shipped abroad, and other information. Although the regulations permit the district director to waive the requirement that certain information be supplied, that waiver does not extend to the requirement of strict physical separation of U.S. and foreign components, which is required in all events. Physical separation of the U.S. and foreign bra straps was not maintained in ———'s case, nor were any of the informational requirements of section 10.24 waived. Consequently, our ruling of April 6, 1981, was clearly inconsistent with the applicable regulations and is, therefore, void.

Accordingly, our ruling letter to you dated April 6, 1981 (068013), is withdrawn and revoked.

(C.S.D. 82-44)

Subject: Drawback: The U.S. Customs Service Is Not Required To Perpetuate an Error Caused by Erroneous Information Submitted by the Drawback Applicant

Date: October 23, 1981
File: DRA-1-09-CO:R:CD:D
212925 B

Re: Further Review of Protest 1101-0-000263 and 1303-0-000321 (Philadelphia)—Drawback—Failure To Complete Claims—19 U.S.C. 1313(b)—(Corporate Name).

REGIONAL COMMISSIONER OF CUSTOMS,
Baltimore, Maryland

DEAR SIR: The referenced protests and requests for further review were filed against a decision by your staff to liquidate two drawback

entries "No Drawback" because of failure to complete the claims within three years of exportation. The entries, No. 163394 of April 4, 1975, covering exportations between April 19, 1972 and December 19, 1974, and No. 127197 of February 15, 1979, covering exportation between February 12, 1976 and January 7, 1977, were liquidated on June 27, 1980. Demands for payment of $1,373.55 and $7,920.00, paid under the accelerated program, were made on that latter date.

Protestant asserts that because Customs paid earlier like claims for drawback under protestant's approved contracts, the protested claims should also be paid.

Issue: Do the payments of drawback by Customs on approved drawback contracts later discovered by Customs to be defective, estop Customs from denying payment of claims made subsequent to the discovery?

Law and analysis: Drawback entry 163394 was filed under T.D. 55387(I) covering tubing and other articles of tetrafluoroethylene resin manufactured with the use of powdered tetrafluoroethylene resin, under T.D. 70–109(T) covering extrusions, profiles, etc. of plastic manufactured with the use of fluoroethypolypropylene, and under T.D. 75–39(I) covering the aforementioned articles manufactured with the use of high molecular weight polyethylene.

This entry shows that "fluon and hostaflon resins and hostaflon gur resins" were used in manufacture. These products were apparently not covered by the previously-noted approvals, and after an inquiry from your staff on January 20, 1976, protestant advised your drawback staff that "fluon and hostaflon are trade names * * * and hostaflon gur is always polyethylene." The hostaflon gur resins were in fact covered as "Gur 400 Hoechst" in T.D. 75–39(I). Upon your staff's request for internal advice, a Headquarter's advisory stated protestant should amend its existing drawback rates and protestant was informed so by three memorandums forwarded in February, March, and April of 1976. Headquarters also directly asked protestant for additional information at this time to clarify the situation. The protestant later filed a drawback proposal dated August 28, 1979 which was approved as T.D. 79–155(U), covering in part the substitution of tetrafluoroethylene polymers (TFE) and fluorinated ethylene propylene (FEP). It is this approval on which the second drawback claim was made.

After research by both Headquarters aud the field laboratory, it was concluded that although TFE and FEP have some common properties, they are different substances, requiring different manufacturing processes to produce the desired products. A meeting between protestant's representatives and Customs personnel was held on May 14, 1979, and a follow up memorandum to protestant was

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sent May 21, 1979, advising it to submit a revised statement, excluding reference to FEP.

Over one year later, a revised statement had not been submitted, and on June 6, 1980, protestant was advised that claims not completed within three years of exportation are to be treated as abandoned, per section 22.13(a) of the regulations.

Protestant has not submitted a revised statement and evidently relies on its claim in the first entry that the designated substances are covered by the existing drawback rates and on its claim in the second entry that the TFE and FEP are the same kind and quality.

As to the first entry, protestant informed your office that "Hostaflon Gur Resins is always the polyethylene," and that "Fluon and Hostaflon are trade names" for that substance. However, research shows that Hostaflon, Hostaflor, and Fluon are trade names for polytetraflouorethylene (PTEE), not covered by any approved contract held by protestant. Further, both regional and Headquarters laboratory reports indicates TFE and FEP are not the same substances. These facts should settle any arguments that demands for repayment of the accelerated drawback should not have been made, after the claims were liquidated "no drawback."

The doctrine of equitable estoppel cannot be invoked by protestant in connection with drawback entry 127197 because this apparently was the first claim made pursuant to T.D. 79–155(U). As to the first entry under consideration, 163394, that was not the first under the earlier approved contracts nor was it the first designating Fluon and Hostaflon resins and Hostaflon gur resin.

Equitable estoppel likewise is not available to protestant in connection with the first entry. Although Customs refunded drawback in earlier like claims, it did so in reliance that the information contained in protestant's contracts was accurate. Customs approved T.D. 75–39(I), which allegedly covered polyethylene, but once Customs discovered that the designated merchandise apparently was not that substance, the protestant was asked for information and Customs took steps to determine the accuracy of protestant's contract. When Customs found that protestant's contract was incorrect, it was notified and directed to submit a revised contract. This contract, though approved by Customs, also has been found incorrect. There is no legal or equitable reason which would compel Customs to perpetuate an error to the further detriment of the revenue. In this case, it was the act of supplying erroneous information which has worked to the detriment of the protestant.

Holding: You are directed to deny the protests in full. The protests and related papers are returned herewith.

(C.S.D. 82–45)

Subject: Vessels: Transportation of Crab Between a Point in Alaska and Another Point in the United States via Canada in a Non-Coastwise-Qualified Vessel

Date: October 27, 1981
File: VES–3–CO:R:CD:C
105319 JM

This ruling concerns the transportation of crab between a point in Alaska and another point in the United States via Canada in a non-coastwise-qualified vessel.

Issues: 1. Does the cleaning, trimming, sorting, segmenting, glazing and packing of frozen crab parts in 20-pound cartons create a new and different product within the meaning of 19 CFR 4.80?

2. Does the removal of crab meat from frozen crab parts and the subsequent sorting, packing, cooking, canning, and packing of the cans in cartons, create a new and different product within the meaning of 19 CFR 4.80?

3. Does the sale of the processed crab, described in (1) above, to an unrelated Canadian wholesaler, broker, or processor in Canada, enter the processed crab into Canadian commerce so as to break the continuity of possible transportation should any of the product ultimately be sold into the United States?

4. Does the sale of frozen crab parts to an unrelated Canadian wholesaler, broker or processor in Canada before the processing described in (1) occurs enter the crab into Canadian commerce so as to break the continuity of possible coastwise transportation should any of the product ultimately be sold into the United States?

5. Does the sale of the processed canned crab described in (2) above to an unrelated Canadian wholesaler, broker, or processor in Canada enter the processed crab into Canadian commerce so as to break the continuity of possible coastwise transportation should any of the product ultimately be sold into the United States?

6. Does the sale of the frozen crab parts to an unrelated Canadian wholesaler, broker, or processor in Canada before the processing described in (2) above occurs enter the processed crab into Canadian commerce so as to break the continuity of possible coastwise transportation should any of the product ultimately be sold into the United States?

Facts: The motor vessel (name) was built in the United States and presently is registered under the U.S. flag. The vessel is not eligible to be documented for the coastwise trade as a result of having been registered under a foreign flag. The vessel is owned by a (location)

corporation which is a wholly owned subsidiary of (corporate name and geographic location) corporation that buys and sells seafood. The vessel owner plans to use the vessel to receive frozen crab from harvesting/processing vessels within territorial waters off the coast of Alaska and to transport the crab to Vancouver, British Columbia. At Vancouver, the crab will be sold to a processor or custom-processed for (name) and then sold either to an unrelated Canadian broker or wholesaler or retained by (name). It is possible that some of the proces-ed crab will enter the United States.

(Name) through its counsel contends that planned transportation would not violate 46 U.S.C. 883 in that the sale of the crab in Canada breaks the continuity of the voyage and/or that the processing in Canada results in a new and different product. (Name) has requested a ruling pursuant to Part 177 of the Customs Regulations (19 CFR 177).

Law and Analysis: Title 46, United States Code, section 883 provides in pertinent part that:

> "No merchandise shall be transported * * * between points in the United States, including Districts, Territories and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States * * *. *Provided*, that no vessel having at any t me acquired the lawful right to engage in coastwise trade, either by virtue of having been built in, or documented under the laws of the United States, and later sold foreign in whole or in part, or placed under foreign registry, shall hereafter acquire he right to engage in the coastwise trade.* * *

While acknowledging the fact that the (vessel) is not entitled to engage in the coastwise trade, (name) states that the processing of the crab at Vancouver brings its subsequent transportation under 19 CFR 4.80(b) which provides in Part:

> However, merchandise is not transported coastwise if at * * * a foreign port or place * * * it is manufactured into a new and different product, and the new and different product thereafter is transported to a coastwise point.

In commenting on what constitutes substantial transportation of a product, the Court in *American Maritime Assn. v. Blumenthal*, 590 F. 2d 1156, 1160 (D.C. Cir. 1978) stated "* * * the Bureau of Customs ordinarily considered processing to be 'substantial', and thus likely to be the 'main purpose' of the exportation, if it 'changed the merchandise physically, improved its condition, and advanced it in value' so that after processing it was a new and different product * * *." In that case, the Court also indicated that exact guidelines could not be established for determining when a new product results

from processing. In note 37 on page 1163, the court stated, "But we submit that along a spectrum of possible change for any particular item, there exists a point—determinable perhaps only through experience and subject to change through time and circumstance—at which that item, when altered in some substantial respect, becomes new and different."

In support of its position, (name) cites a Customs letter dated October 15, 1969, which expressed a preliminary view, not a final ruling, that the processing of Alaskan oil was substantial. In that case, Customs stated that processing was substantial "if it changed the merchandise physically, improved its condition, and advanced it in value, so that after processing it was a new and different product * * *." In another case cited by (name) to support its position that the processed crab meets the standards for a new product, T.D. 32285, the U.S. Court of Customs Appeals held that imported hides of cattle were the skins taken from animals, and as such were commodities distinct and different from live cattle exported.

In a telegraphic ruling dated September 12, 1980, (Case No. 104859) we considered the processing of crabs in Canada which "would consist essentially of cutting the crab into smaller parts and would transform them into products which have slight physical but no chemical or useful differences from their original form." In that case, we held that the crab sections would not be different products within the meaning of section 4.80, Customs Regulations.

The processing described under Issue 1 above appears to be similar to that considered in case no. 104859 in that frozen crab are received and frozen crab result from the processing operation. However, the processing described in Issue 2 above results in a new and different product, that is, cooked, canned crabmeat rather than frozen crab parts. Although not controlling, we considered the fact that frozen crabmeat and prepared or preserved crabmeat (cooked, canned crabmeat) are listed under different item numbers in the Tariff Schedules of the United States and subject to different rates of duty upon importation.

The four remaining issues listed above concern whether the sale of the crabs or crab parts in Canada under various circumstances enters the articles into the Canadian commerce so as to break the continuity of the possible coastwise transportation. (name) states that when crabs are sold to a foreign buyer in Canada the continuity of the voyage is broken in the absence of an existing intention at the time of shipment that all or part of the goods reach another coastwise point.

While we agree with (name) that intent is an essential element in determining whether the sale of the crab in Canada broke the con-

tinuity of the voyage, the intent of parties to the sale other than (name) must be considered. The Attorney General, in 34 Op. Atty. Gen. 350, 363 (1924), held:

> That when American grain is transported in a foreign vessel from an American port to a Canadian port without existing intent on the part of those responsible for the transportation that the grain shall be transshipped to an American port and the grain is intermingled and its identity lost, such transportation becomes an exportation from the United States. Whether the subsequent transportation of such grain to an American port is a violation of section 27 of the Merchant Marine Act must be determined by the existing facts in each case. The intention of the shipper, and not the contract of shipment, is the controlling factor in determining whether the transportation is a violation of the Act.

The Attorney General identifies those responsible for the transportation as "the consignor, the consignee, or a subsequent owner." (34 Op. Atty. Gen., 359) Accordingly, the intention of those purchasing the crabs in Canada must also be considered.

In our ruling 104277 dated November 20, 1979, we held that the continuity of transportation is not broken "when grain is transported from a United States port to a Canadian St. Lawrence port (with the intention that the grain be exported on deep-drafted vessels which could not be accommodated at the United States port of origin) where it is laden on another vessel for transportation to a United States New England port". In that case, the purchaser of the grain who planned to transport the grain to the United States in non-coastwise qualified vessels had no control of or affiliation with the sellers of the grain at the Canadian port.

Effect on other rulings: None.

Holdings: 1. The cleaning, trimming, sorting, segmenting, glazing and packaging of frozen crab parts does not create a new and different product with the meaning of section 4.80, Customs Regulations (19 CFR 4.80).

2. The removal of crab meat from frozen crab parts and the subsequent sorting, packing, cooking, canning and packing of cans into cartons creates a new and different product within the meaning of 19 CFR 4.80.

3. The sale of the frozen processed crab either before or after processing, to an unrelated wholesaler, broker or processor in Canada will break the continuity of the voyage only when there is no intent by the parties concerned that the shipment or any part thereof, be transported to the United States. In determining the intention of the parties, Customs will review all factors, including the existing market in Canada for the entire shipment, the cost of crab in Canada

and the United States and whether the shipper had prospective purchasers in either or both countries.

4. Since we held that the canned crab is a new and different product, transportation of the canned crab to the United States would not constitute a violation of the coastwise laws. Accordingly, no ruling is required concerning the sale of the processed canned crab.

(C.S.D. 82–46)

Subject: Customs Bonds: Pursuant to Sec. 113.17, C.R., Customs Officers May Not Accept Modified Versions of a Customs Bonds Form Without Express Approval From Customs Service Headquarters

Date: October 29, 1981
File: BON-2-01 RRUCDB WR 212090

Issue: Whether the Customs Service will accept a modified version of Customs bond as security for an entry?

Facts: A principal and surety submitted a bond on Customs form 7595 to a district director for acecptance in which the obligors had limited the scope of a printed provision by adding the words "This bond does not cover any provisions under the Antidumping Act."

Law and Analysis: Condition 8 of the General Term Bond for Entry of Merchandise, Customs form 7595, contains a promise to pay all duties found legally due and unpaid on all consumption entries that are charged against the bond.

In the case of *C.J. Tower & Sons* v. *U.S.*, 71 F 2d 438, 21 C.C.P.A. 417, T.D. 46943 (1934), the court held that antidumping duties were to be considered as duties for all purposes. Although the Antidumping Act of 1921, as amended (19 U.S.C. 160–171), was repealed, the corresponding provisions in the successor legislation use the same language (19 U.S.C. 1673–1673i). For example, repealed section 202 of the Act ofMay 27, 1921, 42 Stat. 11, as amended (19 U.S.C. 161), imposed a special dumping duty in an amount equal to the difference between the foreign market value and the purchase price or exporter's sales price. Section 731 of the Act of July 26, 1979, P.L. 96–39, 93 Stat 162 (19 U.S.C. 1673), imposes, in similar language, an antidumping duty equal to the amount by which the foreign market value exceeds the United States price for the merchandise. Further, repealed section 211 of the Act of May 27, 1921, 42 Stat 15 (19 U.S.C. 170), provided that the special dumping duty was to be treated in all respects as regular customs duties within the meaning of all laws relating to drawback of customs duties. Section 740 of the Act of July 26, 1979,

P.L. 96–39, 93 Stat 175 (19 U.S.C. 1673i), provides that the antidumping duty shall be treated in all respects as a normal customs duty for the purpose of any law relating to the drawback of customs duties. Thus, the conclusion of the *C.J. Tower* court that the language indicate that the Congress intended that the additional duties be considered as duties for all purposes remains valid despite the new statute.

Further, it is clear that the Customs Service considered a consumption entry bond to be sufficient as security for antidumping duties. See telex (APP-204-TROTA-EH) of December 31, 1979, from the Director, Trade Analysis Division to principal Customs Service field officers.

Until the Department of Commerce issues instructions to the contrary, payment of antidumping duties will continue to be secured by consumption entry bonds. The purpose of published uniform bond forms is to avoid having Customs officers in the field being required to determine whether a submitted bond form is legally sufficient as security for a particular transaction.

Holding: Customs officers may not accept modified versions of a Customs bond form without express approval from Customs Service Headquarters in accordance with section 113.17, Customs Regulations. Because the General Term Bond for Entry of Merchandise (CF 7595) is still considered to provide security for the payment of antidumping duties, a modification of the bond form which deletes that coverage from the bond form makes the form unacceptable. A district director shall not accept such a bond without specific authority from this Headquarters.

(C.S.D. 82–47)

Subject: Temporary Entry: Temporary Housing Units Leased to a Resident Corporation for Temporary Use in the United States Are Not Entitled to Entry Under Items 864.35 and 864.50, TSUS

Date: November 9, 1981
File: CO:R:CD:D
213637 R

Issues: 1. Whether temporary housing units that are leased to a resident corporation for temporary use in the United States are entitled to entry under item 864.50, Tariff Schedules of the United States (TSUS)?

2. Whether housing units that are brought into the United States for temporary use in the United States by a resident corporation are imported within the meaning of General Headnote 1, TSUS?

3. Whether housing units which are mounted on wheels and which are used as housing units in the United States for the duration of the Olympic Games are in foreign commerce under the Customs laws?

4. Whether housing units used to house persons at the Olympic Games are entitled to be entered for transportation and exportation?

5. Whether housing units on wheels and used as housing units are entitled to entry under item 864.35, TSUS?

6. Whether the failure of the importer to make a duty-free entry, when the temporary nature of the stay in the United States was known, is a mistake of fact?

Facts: A foreign corporation made consumption entries for certain housing units that were leased to a resident United States corporation for temporary use in the United States. The entry papers showed that the housing units were to be used to house athletes for the duration of the Olympic Games in the United States. The housing units were mounted on wheels, but were not self-propelled.

Law and analysis: It is contended that temporary housing units are entitled to entry under item 864.50, Tariff Schedules of the United States (TSUS). That provision lists the types of articles that may be temporarily imported and then states "all the foregoing imported by or for nonresidents sojourning temporarily in the United States and for the use of such nonresidents." It is clear that entitlement to the provision depends on the importer meeting three independent requirements: (1) the articles must fall within the listed types, (2) the entry must be made by or for a nonresident, and (3) the article is for the entering nonresident's use. Failure to establish all three points is fatal to establishing entitlement to the provision.

The evidence presented shows that the articles were for the use of the Lake Placid 1980 Olympic Games Inc. The importer is shown to be a nonresident corporation on the entry. The original provision, paragraph 9 of section 308, Tariff Act of 1930, as amended, allowed temporary importation of "Professional equipment, tools of trade, and *camping equipment imported for their own use* by nonresidents sojourning temporarily in the United States," . . . Act of June 25, 1938, sec. 4, Pub. L. 75-721, 52 Stat. 1079 (emphasis added). After adoption of the Tariff Schedules in 1962 (19 U.S.C. 1202), the provision was designated as item 864.50, TSUS, without change. That provision was amended to its present form by Act of October 24, 1968, Pub. L. 90–635, 82 Stat. 1351. That statute added Headnote 1 for Part 5c, Schedule 8, TSUS, which required that entry under item 864.50, TSUS, must be made by the nonresident importing the articles or by an organization represented by the nonresident. It is clear that the word "nonresident" in the statute refers to an individual rather than a corporation. See also S. Rpt. 1618, 90th Cong. (Oct. 8, 1968).

There is no evidence to show that the importation was made by the corporate importer for use of a nonresident individual. Instead, the evidence indicates that the merchandise was imported for the use of the Lake Placid 1980 Olympic Games Inc., presumably neither a nonresident nor an individual. Accordingly, the available evidence shows no entitlement to entry under item 864.50, TSUS.

It is contended that an article brought into the United States for temporary use by a resident is not an importation within the meaning of General Headnote 1, TSUS. Support for that contention is sought in the case of *The Sherwin-Williams Co.* v. *U.S.*, 38 C.C.P.A. 13, CAD 432 (1950); *Porto Rico Brokerage Co. Inc., et al.* v. *U.S.*, 23 C.C.P.A. 16, T.D. 47672, aff'd 23 C.C.P.A. 259, T.D. 48111 (1936); *East Asiatic Co., Inc.* v. *U.S.*, 27 C.C.P.A. 364, CAD 112, (1940); *Estate of Lew H. Prichard* v. *U.S.*, 43 C.C.P.A. 85, CAD 612 (1956); *American Customs Brokerage Co. Inc., A/C Astral Corp.* v. *U.S.*, 72 Cust. Ct. 245, C.D. 4546 (1974); and 27 O.A.G. 440 (1909). In the *Sherwin-Williams* case, the court had to decide when certain flaxseed was imported. There was a statutory exemption from duty for flaxseed that was imported and entered during a 90-day period after enactment, December 23, 1943. The seed arrived in the port of Cleveland on December 7, 1943, and was entered January 27, 1944. The court held that the plain language required both importation and entry within the time period rather than simply importation. Consequently, the court did not discuss the issue here; that is, what effect, if any, the temporary nature of a stay in the United States has to the concept of importation. The *Porto Rico* case involved the dutiable status of coffee brought into that territory from the United States. The court agreed that the collection of duty on such coffee was permissible even though the court recognized that duty usually is imposed on merchandise from a foreign country. The case did not concern the question at issue here; that is, whether the temporary introduction of merchandise into the United States is an importation.

The *East Asiatic Co.* case involved an interpretation of the word importation as used in the statute governing additional duties for failure to mark, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304). The court stated that "import" in the tariff sense implies the bringing into this country of foreign goods for use or consumption here. Inasmuch as the housing units were brought into the United States for use here as housing units, this case does not appear to support the contention that the housing units were not imported. The *Prichard* and *Astral* cases involve vessels, which are accorded special treatment under the tariff laws. Under General Headnote 5(e), TSUS, vessels are expressly made not subject to the provisions of General Headnote 1, TSUS. Moreover, the *Prichard* case lends no

support to the contention that imported merchandise is to be strictly defined as "merchandise that has been brought within limits of a port of entry from a foreign country with intention to unlade." Although the court found that that definition could not be applied literally in the case of a yacht entering the United States under its own power, it held that an importation occurred and that the demand for a consumption entry was legal. The decision in 27 O.A.G. 440 involved the transshipment of opium without landing in the United States. In that situation, the opium was brought into San Francisco by a vessel, transferred to another vessel, and then carried by the second vessel to a foreign country. Aside from the special statutory status there applicable to opium that decision is factually distinguishable from the present issue. In the present situation, the housing units were brought into the United States for use in this country. The units were not merely being transshiped through the United States as was the opium.

Although not discussed by the importer, the case of *U.S.* v. *Field & Co.*, 14 Cust. Appls. 406, T.D. 42052 (1927), which was cited by the *Astral* court, is closer to the issue here. In *Field*, the importer temporarily brought in samples under section 308, Tariff Act of 1922 (presently item 864.20, TSUS). Despite the temporary nature of the stay, the court found no difficulty in concluding that the samples had been imported. Similarly, the case of *U.S.* v. *Estate of Boshell*, 14 Cust. Appls. 273, T.D. 41884 (1926), also cited by the *Astral* court, but not discussed by the importer, involved a temporary importation under former section 308(5) (now item 864.30, TSUS). Again, despite the temporary nature of the stay of the merchandise, the court concluded that the merchandise had been imported.

The question whether the fact of temporary stay in the United States precludes a finding of importation has been directly decided. In the case of *U.S.* v. *Duluth, etc., RR. Co.*, 7 Cust. Appls. 234, 241, T.D. 36513 (1916), the court said:

> If a foreign article, * * *, be brought into this country for an indefinite period of domestic use here, which period might continue until the article itself were worn out by use, it cannot be saved from the character of an importation by reason of the fact that the owner actually intended to take it out of the country again at a indefinite time in the future.

In the case of *Agency Canadian Car & Foundry Co.* v. *U.S.*, 10 Cust. Appls. 172, T.D. 38547 (1920), it was contended that munitions brought into this country, where it was never intended either by the shipper or consignee that the munitions should mingle with the commerce of this country, were not imported. The court dismissed that contention at pages 175–176.

Indeed, since Part 5c, Schedule 8, TSUS, is part of the Tariff Schedules and deals with merchandise that is temporarily imported, it is difficult to see how one can conclude that such articles are not imported for the purposes of General Headnote 1, TSUS. In any event, the cases cited in support of the importer's contention are not persuasive.

It is contended that the housing units were in foreign commerce as wheeled trailers. In support of that contention, the case of *Melburn Truck Lines (Toronto) Co., Ltd.*, 124 MCC 39 (1975), is cited. In that case, the Interstate Commerce Commission held that a trucking movement which involved bananas being picked up at an United States port and transported to Canada fell within an exemption of the Interstate Commerce Act and was therefore outside the jurisdiction of the Commission. As such, even assuming that the Interstate Commerce Commission has authority to interpret Customs statutes, the decision is not persuasive. Unlike the situation in *Melburn*, the only reason the housing units were brought into the United States was for use in this country. Sections 10.41a and 123.14 of the Customs Regulations are also cited in support of the importer's contention. However, both of those provisions were promulgated under the authority in section 322(a), Tariff Act of 1930, as amended (19 U.S.C. 1322(a)). That statute deals with vehicles and other instruments of international traffic, of a class specified by the Secretary of the Treasury. Notwithstanding the presence of wheels on the housing units, it seems clear that the units were not brought into this country in order to carry goods or passengers. Instead, they were used in the United States as housing. Consequently, we disagree that their use falls within the provisions of 19 U.S.C. 1322(a) and the regulations promulgated thereunder.

It is contended that the housing units are entitled to duty-free entry under item 864.35 TSUS. It is stated that the merchandise in issue consisted of housing units on wheels. They were used as housing units. Item 864.35, TSUS, permits duty-free entry of automobiles, motorcycles, bicycles, airplanes, airships, balloons, boats, racing shells, and similar vehicles and craft. We disagree that housing units are similar to the listed vehicles and craft or that such units constitute the usual equipment of those vehicles or craft. Moreover, despite the presence of wheels, it is not contended that the housing units themselves were brought in for the purpose of taking part in a race or other contest. Instead they were brought in to be used as housing units and, as such, do not fall within the clear language of the statute.

It is contended that the failure to make a duty-free entry is a mistake of fact in view of the decision in *C. J. Tower & Sons of Buffalo, Inc.* v. *U.S.*, 68 Cust. Ct. 17, C.D. 4327, 336 F. Supp. 1395 (1972), aff'd. 61 C.C.P.A. 90, CAD 1129, 499 F. 2d 1277 (1974). In the

Tower case, the court found that the merchandise was entitled to a duty-free entry and that that fact was unknown to the importer and Customs. Here, for the reasons already expressed, we do not agree that the housing units were entitled to a duty-free entry. See also *Godchaux-Henderson Sugar Co. Inc.* v. *U.S.*, C.D. 4874 (1980). Consequently, we do not believe that the holding in the *Tower* case applies here.

Holdings: 1. Temporary housing units that are leased to a resident corporation for temporary use in the United States are not entitled to entry under item 864.50, TSUS.

2. Housing units that are brought into the United States for use in this country as temporary housing are imported for the purpose of General Headnote 1, TSUS.

3. Housing units that are brought into the United States for use as housing in this country are not in international commerce within the meaning of 19 U.S.C. 1322.

4. Housing units that are brought into the United States for use in this country are not entitled to entry under 19 U.S.C. 1553.

5. Housing units, even though on wheels, which are used as housing are not vehicles or craft within the meaning of item 864.35, TSUS.

6. Inasmuch as the housing units were not entitled to duty-free entry, the entry did not involve a mistake of fact within the meaning of 19 U.S.C. 1520(c)(1).

(C.S.D. 82–48)

SUBJECT: DRAWBACK: MERCHANDISE OR ARTICLES IMPORTED DUTY-PAID FROM THE VIRGIN ISLANDS ARE ELIGIBLE FOR RETURN OF THOSE DUTIES UNDER THE SAME CONDITION DRAWBACK LAW

Date: November 10, 1981
File: DRA–1–09–CO:R:CD:D
213686 B

Issue: Are articles imported from the U.S. Virgin Islands and later shipped to these islands in the same condition as imported eligible for drawback under the same condition drawback law, 19 U.S.C. 1313(j)?

Facts: An automobile dealer in the U.S. Virgin Islands imported light trucks duty-paid into the U.S. and sent them to Puerto Rico. The dealer now has the opportunity to sell these trucks in the U.S. Virgin Islands at a financially practical price provided the duty paid upon entry into the Customs territory of the United States can be recovered. He asks whether upon return to the U.S. Virgin Islands the trucks will be eligible for same condition drawback.

Law and analysis: for purposes of this ruling, we assume the trucks were entered or withdrawn from warehouse for consumption in this country on or after December 28, 1980, the effective date of 19 U.S.C. 1313(j).

Both the courts and the Customs Service have defined exportation as a "severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to *some foreign country*" (Emphasis added). This definition was quoted with approval by the Supreme Court in *Sawan and Finch Company* v. *United States*, 19 U.S.C. 143 (1903), and has been attributed to an opinion of the Solicitor General approved by the Attorney General in 1883, 17 Op. Atty. Gen. 579.

The U.S. Virgin Islands are an insular possession of the United States, and even though their officials administer their own tariff laws, they remain American territory and not a foreign country. For this reason, we and the courts have historically held that normally shipments to the Virgin Islands are not considered exportations for purposes of goods manufactured in the United States under drawback conditions (See Legal Determination 3470–16 of May 12, 1978).

However, these cases and rulings dealt with merchandise imported from foreign countries for manufacture in the United States for shipment to the Virgin Islands. In a ruling of December 31, 1962, disseminated as T.D. 55819(11), we stated that merchandise shipped from the Virgin Islands to the United States and entered under temporary importation bond could be returned to the Virgin Islands for purposes of canceling the liability under the bond. We further held that merchandise entered under bond from a foreign country could not be shipped to the Virgin Islands to avoid the bond's liability.

Following T.D. 55819(11) in T.D. 66–255(1) of October 21, 1966, we held that merchandise imported from the U.S. Virgin Islands and found not to conform to sample or specification was subject to drawback under 19 U.S.C. 1313(c) if returned to Customs custody for return to those islands. Our opinion was based on General Headnote 3(a), Tariff Schedules of the United States, which in relevant part provides:

> (i) Articles imported from insular possessions of the United States which are outside the Customs territory of the United States are subject to the rates of duty set forth in column numbered one of the schedules, * * *

From the foregoing language, although insular possessions are American territory, they are considered as being outside the Customs territory and accordingly merchandise imported from them is treated as if imported from a foreign country. Therefore, if merchandise shipped to the United States from an insular possession is an impor-

tation, that same merchandise returned to that possession should constitute an exportation.

If merchandise imported from the Virgin Islands is considered exported when returned to those islands under 19 U.S.C. 1313(c), we can see no cogent reason to treat such merchandise differently under 19 U.S.C. 1313(j), the same condition drawback law.

Holding: Merchandise or articles imported duty-paid from U.S. Virgin Islands are eligible for return of those duties under the same condition drawback law upon return to those islands, assuming compliance with the law and applicable regulations. Goods imported from foreign countries and shipped to insular possessions are not considered exported for purposes of the same condition drawback law.

Other rulings affected: C.S.D. 81–225 Clarified.

(C.S.D. 82–49)

Subject: Instruments of International Traffic: Certain "Mulox Bags" Used in the Transportation of Abrasive Substances in Granular Form Are Considered Instruments of International Traffic

Date: November 19, 1981
File: BOR–7–07–CO:R:CD:C
105402 LLB

This ruling concerns a request that certain "Mulox bags," used in the international transportation of various abrasive substances in granular form, be designated as instruments of international traffic.

Issue: May "Mulox bags," used in the transportation of various granular abrasives, be considered instruments of international traffic within the meaning of title 19, United States Code, section 1322 (a) (19 U.S.C. 1322(a)), and section 10.41a of the Customs Regulations (19 CFR 10.41a).

Facts: Articles known as "Mulox bags" are currently being used to transport various types of abrasive substances in granular form between the United States and Canada. The bags, which are marked with the company logo and will have permanently affixed individual identification numbers, arrive empty from Canada at one of three domestic locations, are filled with abrasive substances, and are shipped back to Canada. The abrasives are used in the manufacture of grinding wheels and sandpaper. Each bag measures 36 inches by 18 inches by 8 inches, and will accommodate up to 25 kilograms of abrasives at a time. The bags are of heavy-duty construction and have an anticipated product life of 3 years. They are entered at the Buffalo-Niagara Falls, New York, port of entry at the rate of 50 per month.

Law and analysis: In order to qualify as an instrument of international traffic within the meaning of 19 U.S.C. 1322(a), an article must be used as a container or holder, must be of substantial construction, must be suitable for and capable of repeated use, and must used in significant numbers in international traffic. The above-described "Mulox bags" meet these requirements.

Treasury Decision 71–209 (T.D. 71–209), designated as eligible articles certain insulated green canvas cotton bags, measuring 17 inches by 16 inches, used for the transportation of photographic chemicals.

Treasury Decision 76–171 (T.D. 76–171), designated as eligible certain woven polypropylene bags, fitted with liners, measuring 54 inches by 35 inches, used for the transportation of dry chemicals.

The "Mulox bags," which are the subject of the instant ruling request, are similar in nature to the bags favorably considered in the above-referenced Treasury Decisions.

Holding: The "Mulox bags," used in the transportation of various abrasives in granular form as described above, are considered to be instruments of international traffic pursuant to T.D. 71–209 and T.D. 76–171, and may be released as such under the procedures provided in section 10.41a of the Customs Regulations.

(C.S.D. 82–50)

Subject: Penalties: A Case Commenced With the Issuance of a Penalty Notice Before the Actual Effective Date of the Revised 19 U.S.C. 1592(c)(4) Is Governed By the Superseded 19 U.S.C. 1592(c)(4)

Date: November 20, 1981
File: ENL 4–02.2 CO:R:E:C
652815 LR

AREA DIRECTOR OF CUSTOMS,
New York Seaport,
New York, N.Y.

DEAR SIR: A memorandum from your office dated October 7, 1981, forwarded the second supplemental petition submitted on behalf of (company name) requesting further relief from a claim for forfeiture value of $216,888, assessed for violation of title 19, United States Code, section 1592 (Case No. 76–1001–54647).

In our decision of November 17, 1978, the claim was mitigated to $3,165, based on a finding of ordinary negligence and a further finding that (name) had voluntarily disclosed the violation.

In its first supplemental petition, (name) claimed that the penalty

should be further mitigated on the basis of revised section 592(c)(4) of the Customs Procedural Reform Act of 1978 (Public Law 95-410) which limits the maximum penalty in cases of voluntary disclosure of negligent violations to the interest on the lawful duties. In a decision dated February 1, 1979, we found that this case was not governed by revised section 592 because it was commenced well in advance of the effective date of section 592(c)(4), with the issuance of a penalty notice on June 30, 1977. Accordingly, no further relief was granted and the November 17, 1978 decision was affirmed.

The record reflects that (name) deposited the mitigated penalty of $3,165 on April 6, 1979.

In its most recent submission, petitioner requests reconsideration of its supplemental petition based on what it calls an "obvious error" in our February 1, 1979 letter. Petitioner contends that our letter erroneously implied that, under revised 592, the determining factor is the date the case was initiated. It is argued that, to the contrary, the determining factor is whether the case was before the court on the date of enactment.

We assume that petitioner's reference to "the determining factor concerns whether the provisions of old 592 or revised 592 apply to a given case.

Petitioner's statement that the determining factor is whether the case was before the court on the date of enactment is correct for purposes of applying the judicial review provisions of revised 592. Revised 592(e) provides for de novo review by the court of all issues, including the amount of the penalty, and is applicable to all cases which are *before the court* on or after the date of enactment. The remaining sections of revised 592, however, are applicable only to proceedings commenced after December 31, 1978. In this regard, see H.R. Rep. No. 1517, 95th Cong. 2nd Sess 13 (1978):

> * * * section 592 would be effective for all proceedings begun after the 89th day after the date of enactment. The only exception to this rule would be section 591(e), providing for de novo review, which would be effective on the date of enactment.
>
> The managers intend that, for purposes of the effective date rules, proceedings begin when the Customs Service issues a prepenalty notice, or, if none is required, when Customs issues a penalty notice.

(See also section 162.70 of the Customs Regulations, 19 CFR 162.70).

Accordingly, we believe that with the exception of the judicial review provisions, the date a case was initiated with the issuance of a prepenalty and/or penalty notice determines whether revised 592 applies.

Petitioner contends, however, that further mitigation should be granted because it believes the Court would apply revised 592 in the

instant matter. We agree that a court considering the instant case could conceivably, by virtue of the judicial review provisions of revised 592, limit the penalty to the interest on the lawful duties in accordance with revised 592(c)(4). However, since petitioner s liability is governed by old 592, a court could also assess any amount of penalty which is consistent with the provisions of old 592. The fact that a court is no longer bound to apply the maximum penalty provided in old 592 has, in our opinion, no bearing on our determination concerning which law to apply to a case under administrative consideration.

After considering petitioner's arguments, we remain of the opinion that the instant case commenced with the issuance of a penalty notice before the effective date of revised 592 and is, therefore, governed by old 592. Accordingly, petitioner's request for further mitigation is denied and our previous determinations are affirmed.

U.S. Customs Service

Proposed Rulemaking

19 CFR Parts 10, 18, 19, 24, 113, 125, 132, 142, 144

Proposed Customs Regulations Amendments Relating to Customs Bonded Warehouses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The document proposes an extensive revision of the Customs Regulations relating to the control of merchandise in Customs bonded warehouses in order to reduce costs to the public and reduce Customs staffing at bonded warehouses. The document proposes to (1) authorize Customs to accept a joint determination by the warehouse proprietor and the carrier, cartman or lighterman, or weigher, gauger or measurer regarding the quantity of goods entered or withdrawn from a warehouse; (2) provide for release of merchandise directly to the proprietor by Customs officers at the customhouse rather than at the warehouse; (3) provide district directors with the authority to allow warehouse proprietors to affix and break Customs seals; (4) establish a fee for both the application to establish a bonded warehouse and the annual renewal of the right to operate a bonded warehouse; (5) establish procedures for the granting of the right to operate a bonded warehouse based on the qualifications, character, and experience of the applicant; and (6) establish procedures for the suspension or revocation of the right to operate a warehouse or to receive or release goods from a warehouse.

DATES: Comments must be received on or before April 14, 1982.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Regulations Control and Disclosure Law Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Audit aspects: Joseph Palmer, Regulatory Audit Division, (202–566–2812).

Operational aspects: John Holl, Office of Inspection, (202–566–5354).

Bonding aspects: William Rosoff, Carriers, Drawback, and Bonds Division, (202–566–5856).

Legal aspects of entry: Benjamin Mahoney, Entry Procedures and Penalties Division, (202–566–5765).

Economic aspects: George Deyman, Economic Analysis Office, (202–566–8933).

U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

When the U.S. Customs Service was established in 1789, sailing ships were the instruments of all international traffic. Through the years procedures adopted by Customs have changed dramatically in an attempt to keep pace with cargo carrying jets, millions of entering passengers, and a workload of 4.5 million commercial transactions per year. Clearly Customs has adjusted, in many ways, to challenges posed by increases in population, commerce, and the breakthroughs in modern technology relating to the processing of cargo.

Although many changes have taken place, one segment of Customs operations has not changed since the time of sailing ships. This segment is the Customs bonded warehouse operation.

A Customs bonded warehouse is a building or other secured area in which dutiable goods may be stored, manipulated, or undergo manufacturing operations without payment of duty. Authority for establishing bonded warehouses is set forth in sections 311, 312, and 555, Tariff Act of 1930, as amended (19 U.S.C. 1311, 1312, 1555). Part 19, Customs Regulations (19 CFR Part 19), sets forth the provisions relating to Customs warehouses and the control of merchandise in these warehouses.

Upon the entry of goods into a bonded warehouse, the importer and warehouse proprietor are subject to liability under their Customs bond. This liability is cancelled when the goods are:

1. Exported;
2. Withdrawn as supplies for a vessel or aircraft in international traffic;
3. Destroyed under Customs supervision; or
4. Withdrawn for consumption in the United States after the payment of duty.

Eight different types or classes of Customs bonded warehouses, discussed below, are authorized under section 19.1, Customs Regulations (19 CFR 19.1).

Class 1. Premises owned or leased by the Government and used for the storage of merchandise undergoing Customs examination, under seizure, or pending final release from Customs custody. Unclaimed merchandise stored in such premises is held under "general order." When these premises are not sufficient or available for the storage of seized or unclaimed goods, the goods may be stored in a warehouse of Class 3, 4, or 5.

Class 2. Importer's private bonded warehouses used exclusively for the storage of merchandise belonging or consigned to the proprietor thereof. A warehouse of Class 4 or 5 may be bonded exclusively for the storage of goods imported by the proprietor thereof, in which case it is also known as a private bonded warehouse.

Class 3. Public bonded warehouses used exclusively for the storage of imported merchandise.

Class 4. Bonded yards or sheds for the storage of heavy and bulky imported merchandise; stables, feeding pens, corrals, or other similar buildings or limited enclosures for the storage of imported animals; and tanks for the storage of imported liquid merchandise in bulk.

Class 5. Bonded bins or parts of buildings or elevators to be used for the storage of grain.

Class 6. Warehouses for the manufacture in bond, solely for exportation, of articles made in whole or in part of imported materials or of materials subject to internal revenue tax; and for the manufacture for home consumption or exportation of cigars in whole of tobacco imported from one country.

Class 7. Warehouses bonded for smelting and refining imported metal-bearing materials for exportation or domestic consumption.

Class 8. Bonded warehouses established for the purpose of cleaning, sorting, repacking, or otherwise changing in condition, but not manufacturing, imported merchandise, under Customs supervision, and at the expense of the proprietor.

All imported merchandise may be entered for warehousing except perishable and explosive substances other than firecrackers.

Full accountability for all merchandise entered into a Customs bonded warehouse must be maintained and merchandise must be inventoried on a regular basis.

Merchandise in a Customs bonded warehouse may, with certain exceptions, be transferred from one bonded warehouse to another in accordance with the provisions of Customs Regulations (19 CFR 19.15, 19.20, 19.24, 144.34).

Basically, merchandise placed in a Customs bonded warehouse, other than Class 6 or 7, may be stored, cleaned, sorted, repacked, or otherwise changed in condition but not manufactured (19 U.S.C. 1562).

Articles manufactured in a Class 6 warehouse must be exported under Customs supervision. Waste or by-products from a Class 6 warehouse may be withdrawn for consumption upon payment of applicable duties.

Imported merchandise may be stored in a Customs bonded warehouse for a period of 5 years (19 U.S.C. 1557(a)).

Customs present operations for controlling warehouses, which are identical to those which existed in the past, are based on the premise that effective control of a bonded warehouse requires the physical presence of a Customs officer.

According to an October 1980 Customs Headquarters study, this present method of operation is costing the economy of the United States $10 million in annual recurring costs. This annual recurring cost is comprised of the following:

a. Approximately $8.4 million in reimbursable charges assessed against the warehouse owners, operators, and proprietors by Customs;

b. Approximately $1.6 million in non-reimbursable Customs appropriation funding.

Additionally, this method of operation currently requires 509 authorized positions (390 reimbursable, 119 non-reimbursable) which represent 3.5% of the Customs employment ceiling. These 390 reimbursable positions cannot be converted to non-reimbursable positions to fulfill Customs responsibilities in other higher priority areas.

The development of an alternative approach for controlling ware house operations is not new to Customs. In December 1964, a report titled *An Evaluation of Mission Organization Management*, more commonly known as the "Stover Report," was prepared. The report commented on the organization and management of the Bureau of Customs and recommended some actions which impacted on warehouse operations. These recommendations were extensively reviewed within Customs following the issuance of the Report. However, no action was taken at that time to implement the recommendations.

In a report dated December 16, 1974, issued to the Commissioner of Customs, the General Accounting Office stated:

> The U.S. Customs Service employs warehouse officers to maintain physical custody of goods in bonded warehouses. We reviewed the necessity of having warehouse officers in view of the inventory document controls maintained at the customhouse and the periodic physical inventories performed by Customs on goods in

bonded warehouses. The existing procedures for centrally controlling bonded goods at the customhouse, together with the bond protection of the Customs duties and the periodic physical inventory checks, are adequate for protecting Government revenues without having a warehouse officer present.

After an extensive review of the control of merchandise in warehouses, Customs is of the opinion that the present system for controlling bonded warehouses should be changed to one adopting an annual reporting system with periodic inventory, spot checks and audits. This document proposes such a system. A system of this type has proven to be feasible and effective when tested in Philadelphia, Pennsylvania and Baltimore, Maryland (Customs Region III). It is Customs belief that the system will be cost efficient in that it will allow the redirection of $1.6 million in annual position costs to support Customs positions.

Further, it is Customs opinion that the proposed reporting system will provide relief to the private warehouse community by alleviating an extensive cost burden ($8.4 million). Such relief will also allow improved flexibility of operations for warehouse proprietors since they need not await arrival of Customs officers to conduct supervision. This is a particularly important consideration to the warehouse proprietors if withdrawals must be made on a weekend, holiday or after normal business hours.

The proposed regulation applies only to control of merchandise within warehouses. It does not apply to warehouse related transactions outside warehouses, such as supervision of exportations. Those transactions will be supervised under current Customs procedures, such as those pertaining to duty-free stores.

The authority to change from the current warehouse officer system to the proposed reporting and audit system is contained in section 646, Tariff Act of 1930, as amended (19 U.S.C. 1646a).

The proposed action would require numerous amendments to Parts 10, 18, 19, 24, 113, 125, 132, 142, and 144, Customs Regulations (19 CFR Parts 10, 18, 19, 24, 113, 125, 132, 142, 144) to:

1. Authorize Customs to accept a joint determination by the warehouse proprietor and the carrier, cartman or lighterman, or weigher, gauger or measures regarding the quantity of goods entered or withdrawn from the warehouse;

2. Provide for release of merchandise directly to the proprietor of the warehouse by Customs officers at the customhouse rather than at the warehouse, as presently required;

3. Provide district directors with the authority to allow warehouse proprietors to affix and break Customs seals;

4. Establish a fee both for the application to establish a bonded warehouse and the annual renewal of the right to operate a warehouse under the authority of 19 U.S.C. 1555 and 31 U.S.C. 483a;

5. Establish procedures for the granting of the right to operate a warehouse based on the qualifications, character, and experience of the applicant; and

6. Establish procedures for suspension or revocation of the right to operate a warehouse or to receive or release goods from a warehouse.

A detailed discussion of the proposed amendments follows:

Discussion of Proposed Amendments

Part 10—Articles Conditionally Free, Subject to a Reduced Rate, Etc.

1. Section 10.62 sets forth the procedure for duty free withdrawals of bunker fuel oil under the provisions of section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309). It is proposed to amend paragraphs (a) and (c) (2) of section 10.62 by eliminating the requirement for use of Customs Form 7505–B, Order to Release Merchandise on Order of the Warehouse Proprietor, and substituting the Customs Form 7506, Warehouse Withdrawal Conditionally Free of Duty and Permit. It is also proposed to revise paragraph (a) by adding a new sentence which indicates that when a blanket withdrawal is filed and a partial release takes place, the partial release procedure set forth in proposed section 19.6(d) will be followed for each partial release.

Paragraph (e) of section 10.62 would be modified by eliminating the last sentence which states that immediate supervision over the removal of oil under the paragraph is not required.

2. Section 10.62a sets forth the procedures for blanket withdrawals for certain merchandise. It is proposed to modify paragraph (a) by simplifying the language and inserting a reference to proposed section 19.6(d) relating to partial release. It is proposed to remove paragraph (b) and mark it reserved. The material in paragraph (b) will be set forth in proposed section 19.6(d). It is also proposed to modify paragraph (c) by substituting the warehouse proprietor for the Customs warehouse officer as the individual to receive the Customs Form 7506 when a partial release is filed. A cross reference is also included in paragraph (c) to the partial release procedures set forth in proposed section 19.6.

3. Section 10.65 relates to cigars and cigarettes in Customs bonded warehouses. It is proposed to amend the second sentence of paragraph

(c)(3) by substituting the words "warehouse proprietor" for "Customs warehouse officer." It is further proposed to modify the paragraph by increasing the total period of time during which merchandise may remain in a warehouse from 3 to 5 years. Pub. L. 95–410 amended section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), to increase the period of time during which merchandise could remain in a Customs bonded warehouse from 3 to 5 years.

It is further proposed to amend paragraph (c)(4) of the section by placing responsibility on the warehouse proprietor for conducting an inventory at least once each month of merchandise for which blanket withdrawals are filed.

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. It is proposed to amend section 18.2(a), relating to the carriers receipts on in bond transportation and merchandise in transit, by setting forth the existing procedure on such merchandise in a new paragraph (a)(1) for all merchandise except merchandise delivered to the bonded carrier from a warehouse. A new paragraph (a)(2) would contain a reference to proposed section 19.6(b) which will set forth the procedure for merchandise delivered from a warehouse.

Also, it is proposed to modify section 18.2(b) by inserting a sentence between the third and fourth sentences to state that quantities of goods transported in bond from a Customs bonded warehouse shall be accounted for under the procedures set forth in proposed section 19.6.

2. It is proposed to correct a clerical error in section 18.3(e) by substituting a reference to Part 125, Customs Regulations, for a reference to Part 21. There is no Part 21 in the Customs Regulations.

3. It is proposed to add a new paragraph (i) to section 18.4 to indicate that except as provided in section 18.3(d), Customs Regulations, seals affixed under section 18.4 will be removed only under Customs supervision.

PART 19—CUSTOMS WAREHOUSES, CONTAINERS STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. Section 19.1 sets forth the various classes of Customs bonded warehouses and the construction requirements. It is proposed to delete the last two sentences from paragraph (a)(4) which relate to security measures at a Class 4 warehouse. Security requirements for all classes of warehouses will be set forth in proposed section 19.12.

Paragraph (c) relates to construction of a warehouse and indicates that the bonded and nonbonded portions of a warehouse shall be effectively separated by partitions of substantial materials and con-

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struction and erected in such a manner as to render it impossible to enter premises in the absence of the warehouse officer without such violence as to make entry easy to detect. Because the warehouse officers position would be eliminated under the proposal, the reference to the warehouse officer must be eliminated.

Paragraph (c)(3) discusses the manner of construction of wood partitions and gates and indicates that the gates shall be equipped with a positive-type latching device with provision for accepting a Customs-approved padlock. Under the proposed revision padlocks will no longer be approved by Customs. Accordingly, this reference would be deleted from paragraph (c)(3). No changes have been proposed to the existing construction requirements for warehouse partitions and gates.

2. Section 19.2 relates to the application procedures required to establish a Customs bonded warehouse.

It is proposed to modify paragraph (a) to set forth certain conditions for approval of an application.

Under proposed paragraph (a), applications for renewals of a warehouse facility must be filed annually with the district director. A fee as prescribed by proposed section 19.5 must accompany the request.

Further, under the proposal, a warehouse facility would be determined by street address, location, or both except for smelting warehouses. For example, if a proprietor had two warehouses located at one street address and three warehouses located at three different street addresses, the two located at one address would be considered as one warehouse facility and the three located at three different addresses would each be considered as separate warehouse facilities.

In approving an application to establish a warehouse facility under proposed paragraph (a) Customs would determine whether the facility meets the following conditions: (i) the entry transaction level or dollar value of merchandise, or both, is of sufficient volume to warrant establishment of the facility; (ii) the warehouse facility is located 35 miles or less from the port of entry; and (iii) Customs has personnel resources available to adequately control all warehouse operations including the operation of the applicant warehouse facility within the district. If the above conditions are not met Customs would not approve the application. However, the latter condition would not apply if a warehouse proprietor is merely relocating his operation within the same district. If the relocation is from one district to another and Customs personnel in the new district are not available to handle the increase in workload, an application for the new warehouse facility would not be approved.

Under proposed paragraph (c), on approval of the application to

bond a warehouse of class 2, 3, 4, 5, or 8, a Proprietor's Warehouse Bond must be executed in the form proposed in Appendix B to this document. The Customs Form 3581, Proprietor's Warehouse Bond, would be discontinued.

Under proposed paragraph (d), on approval of the application to bond a proprietor's manufacturing warehouse, class 6, a Proprietor's Manufacturing Warehouse Bond must be executed in the form proposed in Appendix C to this document. The Customs Form 3583, Proprietor's Manufacturing Warehouse Bond, Class 6, would be discontinued. In the case of a bonded smelting and refining warehouse, class 7, the bond must be executed with the required number of copies and in the form proposed in Appendix D to this document.

A new proposed paragraph (f) would indicate that as a condition of approval of the application, the district director may order an inquiry by a Customs officer into the qualifications, character, and experience of the applicant, and into the security, suitability, and fitness of the facility.

A new proposed paragraph (g) would state that the district director must promptly notify the applicant in writing of his decision to approve or deny the application to bond the warehouse. If the application is denied the notification must state the grounds for denial. Further, under the provisions of proposed section 19.3(f), the applicant may seek review of the decision to deny within 10 days after notification.

3. Section 19.3 relates to alterations, suspensions, and discontinuance of bonded warehouses.

It is proposed to modify paragraph (a) to authorize the district director to approve all alterations to a warehouse. Presently, material changes to a class 6 or 7 warehouse must be approved by Customs Headquarters.

Under proposed paragraph (b), the use of all or part of a bonded warehouse or bonded floor space could be temporarily suspended by the district director for a period not to exceed one year on written application of the proprietor if there are no bonded goods in the area. Presently, there is no time limit on the temporary suspension period.

If a proprietor wishes to discontinue the bonded status of the warehouse, under proposed paragraph (c) he must make written application to the district director. The district director may not approve the application until all goods in the warehouse are transferred to another bonded warehouse without expense to the Government. In order to reestablish the bonded warehouse, application must be made and approved under the provisions of proposed section 19.2.

Proposed section 19.3(d), relating to employee lists, is substantially the same as present section 19.3(d) except it has been simplified and

shortened. The district director may make a written demand upon the proprietor to submit, within 30 days after the date of demand, a written list of the names, addresses, social security numbers, and dates and places of birth of all persons employed by the proprietor in the carriage, receiving, storage, or delivery of any bonded merchandise. If a list has been previously furnished, the proprietor must advise the district director in writing, of the names, addresses, social security numbers, and dates and places of birth of any new personnel employed by him in the carriage, receiving, storage, or delivery of bonded merchandise within 10 days after such employment. For the purpose of Part 19 a person is not deemed to be employed by a warehouse proprietor if he is an officer or employee of an independent contractor engaged by the warehouse proprietor to load, unload, transport, or otherwise handle bonded merchandise.

Proposed paragraph (e) provides that the district director may revoke or suspend for cause the right of a proprietor to continue the bonded status of a warehouse for any ground specified in the paragraph. An action to suspend or revoke the right to operate a bonded warehouse must be taken in accordance with the procedures set forth in proposed section 19.3(f). If the bonded status is revoked or suspended for cause, the district director must require all goods in the warehouse to be transferred to a bonded warehouse without expense to the Government. The bonded status of a warehouse may be revoked or suspended for cause if:

(1) The approval of the application to bond the warehouse was obtained through fraud or the misstatement of a material fact;

(2) The warehouse proprietor refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to the operation or administration of a bonded warehouse;

(3) The warehouse proprietor or an officer of a corporation which has been granted the right to operate a bonded warehouse is convicted of or has committed acts which would constitute a felony, or a misdemeanor involving theft, smuggling, or a theft-connected crime;

(4) The warehouse proprietor does not provide secured facilities or properly safeguard merchandise within the bonded warehouse;

(5) The warehouse proprietor fails to furnish a current list of names, addresses, and other information required by proposed section 19.3(d);

(6) The bond required by proposed section 19.2 (c) or (d) is determined to be insufficient in amount or lacking sufficient

sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time; or

(7) Bonded merchandise has not been stored in the warehouse for a period of 2 years.

The foregoing proposed grounds for suspension or revocation are substantially the same as the grounds set forth in present section 19.48, Customs Regulations (19 CFR 19.48), relating to container station operators, and section 112.30, Customs Regulations (19 CFR 112.30), relating to cartman or lighterman.

Proposed section 19.3 (f), relating to a procedure for revocation or suspension for cause, is substantially the same as present section 19.3 3(e), except that final decision making authority is vested in the Regional Commissioner instead of the Commissioner of Customs. The district director may at any time serve notice in writing upon any proprietor of a bonded warehouse to "show cause" why his right to continue the bonded status of the warehouse should not be revoked or suspended for cause.

Such notice must advise the proprietor of the grounds for the proposed action and must afford the proprietor an opportunity to respond in writing within 30 days. Thereafter, the district director must consider the allegations and response made by the proprietor unless the proprietor in his response requests a hearing. If a hearing is requested, it must be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the proprietor's request. The proprietor may be represented by counsel at such hearing, and all evidence and testimony of witnesses in such proceedings, including substantiation of the allegations and the responses thereto shall be presented, with the right of cross-examination to both parties. A stenographic record of any such proceeding must be made and a copy thereof must be delivered to the proprietor of the warehouse. At the conclusion of the hearing, the hearing officer must transmit all papers and the stenographic record of the hearing to the Regional Commissioner together with his recommendation for final action. The proprietor may submit written additional views or arguments to the Regional Commissioner following a hearing on the basis of the stenographic record, within 10 days after delivery to him of a copy of such record. The Regional Commissioner must render his decision in writing, stating his reasons therefor. Such decision must be served on the proprietor of the warehouse, and will be considered the final administrative action.

4. Under the proposal, section 19.4 has been revised to indicate that the character and extent of Customs supervision to be exercised in connection with any warehouse facility or transaction provided for in Part 19 must be in accordance with section 161.1, Customs Regu-

lations. The proposed section indicates that independent of any need to appraise or classify merchandise, the district director may authorize a Customs officer to supervise any transaction or procedure at the bonded warehouse facility. Such supervision may be performed through periodic audits of the warehouse proprietor's records, quantity counts of goods in warehouse inventories, spot checks of selected warehouse transactions or procedures or reviews of conditions of recordkeeping, security, or storage in a warehouse facility. The warehouse proprietor must permit access to the warehouse by any Customs officer.

5. Under revised section 19.5, it is proposed that each warehouse proprietor will be charged a fee to establish or relocate a warehouse facility and an annual fee thereafter which will be determined under the provisions of 19 U.S.C. 1555 and 31 U.S.C. 483a. This proposal envisions aggregating substantially all costs associated with Customs supervision including audit, inspection, investigative and administrative costs. These costs will then be divided among the total warehouse locations at the beginning of the year and the pro rata share will constitute the annual fee. The fees will be revised annually to reflect current costs and the fee will be published in the Federal Register for the next calendar year. Another alternative is to consider billing warehouse proprietors individually for the costs of services incurred by Customs at each individual warehouse and not including this cost in the annual fee. Comments will be entertained on this alternative.

6. The revised proposed section 19.6 establishes procedures for deposit of merchandise in warehouse, withdrawals, partial releases, and sealing requirements.

The district director may authorize the deposit of merchandise in designated bonded warehouses without physical supervision by a Customs officer. Goods for which a warehouse or rewarehouse entry has been accepted, according to the procedures in Part 144, Subpart B, Customs Regulations, must be examined or inspected at the place of unlading, bonded warehouse, or other location as ordered by the district director. When merchandise is deposited in a proprietor's warehouse the proprietor will be held liable under his Proprietor's Warehouse Bond for the quantity and condition of merchandise reflected on the entry documentation adjusted by (1) any discrepancy noted under Part 158, Subparts A and B, Customs Regulations, and (2) any discrepancy report made jointly on the warehouse entry permit (Customs Form 7502–A), i.e., an agreement reached by the warehouse proprietor and the bonded carrier or licensed cartman or lighterman delivering the goods to the warehouse, or an independent weigher, gauger, or measurer, and signed by an authorized representative of

the above. A copy of any joint report of discrepancy must be promptly provided to the district director.

Under the proposal, the district director may authorize the withdrawal and removal of merchandise from warehouse without physical supervision or examination by a Customs officer under a permit issued under the procedure set forth in proposed new section 144.39, Customs Regulations. As revised, section 19.6 provides that when a withdrawal or removal is not physically supervised by a Customs officer, the warehouse proprietor will be relieved of liability under the proprietor's bond only for the merchandise in its warehouse in the condition and quantity as shown on the application for withdrawal or removal, adjusted by any discrepancy report made jointly by the warehouse proprietor and the licensed cartman or lighterman, bonded carrier, or weigher, gauger, or measurer and signed by the authorized representatives of the above. The adjustments will be noted on the permit copy. Under the proposal, a copy of any joint report of discrepancy must be promptly provided to the district director. Under the proposal, no merchandise may be removed until agreement on the quantity and condition of the shipment has been reached.

Further, under the proposed partial release procedure, goods in Customs custody withdrawn without payment of duty from a bonded warehouse may be removed from the warehouse in partial releases by the warehouse proprietor. Each removal must be documented by the proprietor through a copy of the original withdrawal document. The removal documents must be consecutively numbered and the number must appear immediately after the serial number of the original withdrawal. Each copy must bear the summary statement described in section 144.32, Customs Regulations. Any joint discrepancy report of the proprietor and the bonded carrier, licensed cartman or lighterman, or weigher, gauger, or measurer for a partial release must be made on the copy.

As proposed, partial releases may not be removed in a quantity of less than an entire package or, if in bulk, less than one ton in weight. Goods which have been withdrawn for partial release but not removed from a warehouse are still in Customs custody.

Under the revised provisions, the district director may authorize a warehouse proprietor to (1) break Customs in bond seals affixed under section 18.4, Customs Regulations, or under any Customs order or directive, on any vehicle or container of goods entered for warehouse upon arrival of the vehicle or container at the warehouse; or (2) affix Customs in bond seals to any vehicle or container of goods for which a withdrawal document has been approved for movement in bond. The affixing or breaking of seals so authorized, will be deemed

to have been done under Customs supervision since the proprietor's records will be subject to audits and actual spot checks by Customs. Further, the proprietor must report to the district director any seal found, upon arrival of the vehicle or container at the warehouse, to be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the district director.

7. It is proposed to amend section 19.8 by removing the words "and under the supervision of the Customs warehouse officer" from the first sentence because physical Customs supervision is being eliminated.

8. It is proposed to add a new section 19.9 relating to general order, abandoned, and seized merchandise.

Under the new section, it is proposed that a proprietor of a general order warehouse can accept general order, abandoned, or seized goods and articles into the warehouse only upon order of the district director on Customs Form 6043 (Delivery Ticket) as presented by the cartman or lighterman. As proposed, a joint determination must be made by the warehouse proprietor and the cartmen or lighterman as to the quantity and condition of the goods or articles delivered to the warehouse. Any discrepancy between the quantity and condition of the goods delivered and that reported on Customs Form 6043 must be reported to the district director.

Further, general order, abandoned, and seized goods and articles must be recorded and stored in the warehouse as prescribed by proposed section 19.12.

Under proposed section 19.9, merchandise in general order may be released by the warehouse proprietor, after Customs inspection or examination as ordered by the district director, to the consignee or person named in a release order. The release must be made under the provisions of section 141.11, Customs Regulations. General order goods which have been unclaimed under section 127.11, Customs Regulations, voluntarily abandoned, or seized and forfeited, may be released for transfer to the place of sale upon presentation to the warehouse proprietor of an approved copy of Customs Form 5251 (Order to Transfer Merchandise for Public Auction (Sale)), and an approved copy of Customs Form 6043 (Delivery Ticket). The quantity and condition of the goods so transferred must be determined jointly by the proprietor and the cartmen or lighterman picking up the goods for delivery to the place of sale. Any discrepancies must be noted on the delivery ticket and a copy must be sent to the district director. Seized goods that are released for a purpose other than sale may be released from warehouse only upon such written terms and conditions as directed by the district director on Customs Form 6043.

9. It is proposed to amend section 19.10 by substituting "warehouse proprietor" for "warehouseman" since, under the proposal, the Customs warehouse officer position will be abolished.

10. It is proposed to amend section 19.11(d), relating to manipulation in bonded warehouses, and elsewhere by adding certain additional requirements and fixing certain additional responsibilities on the warehouse proprietor.

As proposed, the district director may approve a blanket application to manipulate on Customs Form 3499, for a period of up to one year, for a continuous or a repetitive manipulation. The warehouse proprietor would be required to maintain a running record of manipulations performed under a blanket application, indicating the quantities before and after each manipulation. The record must show what took place at each manipulation describing marks and numbers of packages, location within the facility, quantities, and description of goods before and after manipulation. The district director would be authorized to revoke a blanket approval to manipulate and require the proprietor to file individual applications if necessary to protect the revenue, administer any law or regulation, or both.

11. It is proposed to amend section 19.12, relating to warehouse recordkeeping, storage, and security, to require the warehouse proprietor to comply with the following recordkeeping requirements:

(1) All merchandise entered, manipulated, manufactured or removed from the bonded warehouse must be recorded in the warehouse proprietor's accounting and inventory records by bond lot number. The records to be maintained are those which a prudent businessman in the same type of business can be expected to maintain. The records are to be kept in sufficient detail to permit effective and efficient determination by Customs of the proprietor's compliance with these regulations and the correctness of his annual submission;

(2) Entry folders must be maintained and kept up to date by filing all receipts, damage or shortage reports, manipulation requests, specific removals and blanket removals, and the partial release/permit copy for each removal within two business days after the event occurs;

(3) Extraordinary shortage or damage must be immediately brought to the attention of the district director;

(4) When the final withdrawal of merchandise relating to a specific general order or seizure occurs, the warehouse proprietor must (a) review the entry folder to insure that all necessary documentation is in the folder accounting for the merchandise covered by the entry and (b) file the entry folder with Customs within two business days after final withdrawal.

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(5) Except as provided in proposed section 19.19(b), relating to the manufacturer engaged in smelting or refining, or both, the warehouse proprietor must file with the Regional Director, Regulatory Audit, within 45 days from the end of his business year, a Warehouse Proprietor's Submission in accordance with the instructions and in the format set forth in Appendix E to this document for each warehouse facility owned.

(6) The entry folder for merchandise not withdrawn during the general order period must be submitted to the district director upon receipt from Customs of the Customs Form 6043.

In addition to the above recordkeeping requirements, it is proposed that the warehouse proprietor comply with the following security and storage requirements:

(1) The warehouse proprietor must supervise all receipts, deliveries, sampling, recordkeeping, repacking, or manipulating of merchandise in a bonded warehouse;

(2) The entry folders maintained by the warehouse proprietor must be kept in a secure area and must be made available for inspection by Customs at any time;

(3) The warehouse proprietor must maintain its warehouse facility and establish procedures adequate to insure the security of merchandise located in the bonded area. This will be accomplished by meeting the standards and recommended specifications contained in T.D. 72–56 to the extent those standards and recommendations do not conflict with any local, state, or Federal standard for the safe and sanitary storage of merchandise;

(4) All inlets and outlets to bonded tanks must be secured with locks or Customs in bond seals.

(5) Merchandise in the bonded area must be stored in a safe and sanitary manner to minimize damage to the merchandise, avoid hazards to persons, and meet local, state, and Federal requirements applicable to specific kinds of goods. All trash and waste must be promptly removed from the bonded area. No fires will be permitted in the warehouse except where necessary in connection with manipulating or processing in warehouses of the class 6, 7, or 8 type. Aisles must be established and maintained, and doors and entrances left unblocked for access by Customs officers and warehouse proprietor personnel.

(6) Packages must be received in the warehouse according to their marks and numbers. Packages containing weighable or gaugeable merchandise not bearing shipping marks or numbers must be received under the weighers or gaugers numbers. Packages with exceptions due to damage or loss of contents,

or not identical as to quantity or quality or contents must be stored separately. The warehouse proprietor must mark all shipments for identification, showing the general order or warehouse entry number or seizure number and the date of the general order, entry, or delivery ticket in the case of seizures. All containers covered by a given warehouse entry, general order, or seizure, must be stored in the same location and not mixed with goods covered by any other entry, general order, or seizure, unless written approval has been given by the district director for an exception from the requirement. The proprietor must provide, upon request by a Customs officer, a record balance of goods covered by any warehouse entry, general order, or seizure, so a physical count can be made to verify the accuracy of the record balance.

12. It is proposed to amend section 19.13(a) by substituting "the district director" for "Headquarters, U.S. Customs Service" since it is Customs opinion that the various district directors should have the authority to approve Customs bonded manufacturing warehouses. Appropriate proposed changes to Part 113, Customs Regulations, are also made.

13. It is proposed to amend section 19.13(d) by removing the words "in duplicate", and by substituting a period for the comma after the words "district director" and removing the remainder of the sentence. Customs Headquarters no longer will have a need for a copy of the document listing all articles intended to be manufactured in the warehouse.

14. It is proposed to amend section 19.13(g), relating to requirements for establishment of warehouses, to delete the references to the Customs warehouse officer and to Customs locks.

15. It is proposed to revise section 19.14(b) and (c), relating to materials for use in a manufacturing warehouse, to eliminate the reference to Customs Form 3583 and substitute a reference to the required bond. In paragraph (c), the reference to the Customs warehouse officer and the duplicate copy of the "Application to Receive Free Materials" which he presently receives, would be eliminated. It is also proposed to revise the "Application to Receive Free Materials" to eliminate the reference to the Customs warehouse officer and substitute a reference to the warehouse proprietor.

16. It is proposed to amend section 19.15(a) by substituting the word "Customs" for "a Customs officer" in the last sentence since physical supervision will be eliminated.

17. It is proposed to amend the first sentence of section 19.15(j) by substituting the words "certified by the warehouse proprietor"

for "verified by the Customs warehouse officer in charge of the warehouse" for the same reasons as the previous change.

18. It is proposed to amend the first and last sentences of paragraph (a), paragraphs (b) and (c), the last sentence of paragraph (g)(1) and the "Application and Permit for Transfer of Sscraps, Cuttings, and Clippings" in paragraph (h) of section 19.16, relating to cigar manufacturing warehouses.

The proposed amendment to paragraph (a) would eliminate the reference to storage under Customs locks and substitute a reference to the warehouse proprietor's locks. The last sentence of paragraph (a) would be modified to require verification of returns by the warehouse proprietor rather than the Customs warehouse officer.

Under proposed paragraph (b), the warehouse proprietor would make appropriate entry in his records of the quantity and class of cigar removed rather than the Customs warehouse officer. Further, the requirement for affixing Customs stamps to cigars has been eliminated. It appears that this is an archaic requirement which is no longer followed.

The proposed amendment to paragraph (c) would eliminate the requirement that the record required be kept on the Customs Form 5215, Record of Bonded Merchandise Received, Permitted and Delivered from Warehouse.

The proposed amendment to paragraph (g)(1) substitutes a reference to the required bond form set forth in Appendix C to this document.

Finally, it is proposed to modify the "Application and Permit for Transfer of Scraps, Cuttings, and Clippings" by substituting a reference to the warehouse proprietor for the Customs warehouse officer.

19. It is proposed to amend section 19.17 (a), (c), (e), and (g), relating to the application to establish a bonded smelting and refining warehouse.

Paragraph (a) would be modified to authorize the district director to approve an application for such a warehouse.

Paragraph (c) would be modified by eliminating the reference to Customs Headquarters and substituting the district director as the individual responsible for approving discontinuance of a warehouse.

Paragraph (e) would be amended by substituting a reference to the proposed bond form set forth in Appendix D to this document for the reference to the bond prescribed by T.D. 72–244.

Paragraph (g) would be modified to remove the reference to Headquarters, U.S. Customs Service.

20. It is proposed to amend section 19.19 relating to records to except smelting or refining warehouses from the requirements of pro-

posed section 19.12(a)(5) relating to the Warehouse Proprietors Submission.

21. It is proposed to modify section 19.21(b) by adding "section 19.4 and" before the words "the commercial practice."

22. It is proposed to amend section 19.29, relating to sealing of bins or other bonded space, to eliminate the references to Customs officers, Customs locks, and Customs strap seals, and substitute a reference to sections 19.4 and 161.1 in lieu of the reference to Customs supervision.

23. It is proposed to amend the third sentence of section 19.34 by substituting a reference to an "appropriate Customs officer" for the reference to "supervising Customs agent".

PART 22—DRAWBACK

It is proposed to amend section 22.28(d), relating to continuous Customs custody, to indicate that for purpose of Part 22, in the case of merchandise entered for warehouse, Customs custody will be deemed to cease when duty has been paid and the district director authorizes the withdrawal of the merchandise.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. It is proposed to amend section 24.12 by removing paragraph (a) relating to Customs fees, and mark the paragraph "Reserved". Proposed section 19.5 contains the fee requirements for establishing a Customs bonded warehouse.

2. It is proposed to amend the first and fourth sentences of paragraph (c) and the first sentence of paragraph (f) of section 24.13 by revising them to authorize bonded warehouse proprietors to purchase in-bond and in-transit seals.

3. It is proposed to amend section 24.17(d) to set forth the charges for reimbursable services. The substance of this section is presently contained in section 19.5, Customs Regulations. It is believed that it would be more appropriate in Part 24, Customs Regulations.

PART 113—CUSTOMS BONDS

1. It is proposed to remove section 113.13(a), relating to bonds approved by the Commissioner of Customs, and mark it "Reserved". It is Customs opinion that there is no reason why the Proprietor's Manufacturing Warehouse Bond and the Blanket Smelting and Refining Bond currently approved by the Commissioner should not be approved by the district directors. Accordingly, authority to approve

these bonds is vested in the district directors by proposed paragraphs (hh) and (ii) of section 113.14.

2. It is proposed to amend section 113.14(a), relating to the Proprietor's Warehouse Bond, and add to section 113.14 new paragraphs (hh) and (ii) relating to the Proprietor's Manufacturing Warehouse Bond and the Blanket Smelting and Refining Bond, respectively.

It is proposed to amend paragraph (a) by eliminating the reference to the Customs Form 3581, Proprietor's Warehouse Bond. The text of a revised proposed Proprietor's Warehouse Bond is set forth in Appendix B to this document.

It is proposed to add a new paragraph (hh) which vests authority in the district director to approve the proposed new Proprietor's Manufacturing Warehouse Bond which is set forth in Appendix C to this document. The Customs Form 3583, Proprietor's Manufacturing Warehouse Bond, would be discontinued.

It is proposed to add a new paragraph (ii) which grants to the district director the authority to approve the Blanket Smelting and Refining Bond, the proposed text of which appears in Appendix D to this document.

3. It is proposed to amend section 113.39(b), Customs Regulations, relating to the authority to sell United States obligations on default when such obligations are accepted in lieu of sureties on a bond. Section 113.39(b) contains two references to Treasury Department Circular No. 154, dated October 31, 1969, as amended. One reference appears in the text and the other appears in the "Power of Attorney and Agreement" format. The Treasury Department Circular has been superseded by Treasury Department Circular No. 154, Revised, dated July 1, 1978. Accordingly, it is proposed to amend the Customs Regulations to reflect this change.

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

1. It is proposed to remove paragraph (d), relating to Customs Form 7505–B, Order to Release Merchandise on Order of the Warehouse Proprietor, from section 125.31 concerning documents used when merchandise is carted or lightered to or from bonded warehouses, and mark the paragraph "Reserved".

It is further proposed to amend section 125.31 by adding a new paragraph (g) relating to Customs Form 7519, Combined Rewarehouse Entry and Withdrawal for Consumption and Permit.

2. It also is proposed to amend section 125.33(b), relating to procedures on receiving merchandise from a bonded warehouse, to indicate that the merchandise shall be released only to the warehouse proprietor, who must acknowledge such release on the appropriate withdrawal or removal document.

PART 132—QUOTAS

It is proposed to amend section 132.15, relating to withdrawal from warehouse prior to opening of quota to indicate that merchandise subject to a tariff rate quota entered for warehouse for which a withdrawal for consumption has been made in the manner prescribed in section 141.68(d) of this chapter prior to the opening of the quota period, may not be accorded any quota benefit which may become effective after the time of presentation of such withdrawal, even though the merchandise was not physically removed from the warehouse until after the start of the tariff rate period. For the purposes of applying tariff rate quotas, the date that the warehouse withdrawal is presented shall be treated as the date the merchandise is withdrawn for consumption.

PART 142—ENTRY PROCESS

It is proposed to conform Bond Rider "R" set forth in section 142.5 to the same condition which appears in condition (2)(a) of both the Immediate Delivery and Consumption Entry Bond (Single Entry), Customs Form 7551, and Immediate Delivery and Consumption Entry Bond (Term), Customs Form 7553, and condition (1)(a) of the General Term Bond for Entry of Merchandise, Customs Form 7595, by deleting the comma which appears between the words "default" and "plus" in the third paragraph of the rider.

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. It is proposed to remove paragraph (b), relating to conditionally free merchandise, from section 144.1 concerning merchandise eligible for warehousing and mark the paragraph "Reserved". Customs has ruled that dutiable and nondutiable merchandise may be entered for warehouse.

2. It is proposed to amend section 144.22, relating to endorsement of transfer on the withdrawal form, by revising it to indicate that transfer of the right to withdraw merchandise entered for warehouse must be established by an appropriate endorsement on the withdrawal form by the person primarily liable for payment of duties before the transfer is completed, i.e., the person who made the warehouse or rewarehouse entry or a transferee of the withdrawal right of such person. The endorsement must be made on the appropriate withdrawal forms listed in the proposed section.

3. It is proposed to add a new paragraph (c), in lieu of existing sections 19.6(b) and(c) relating to charges and liens, to section 144.32 to indicate that upon receipt of an application to withdraw merchan-

dise the appropriate Customs officer must determine whether there are any cartage, storage, labor or any other charges due the Government, in connection with the goods remaining unpaid or whether there is on file any notice of lien filed by a carrier. If there are no charges of liens or all charges and liens have been satisfied, and all other requirements of law or regulations have been met the proprietor's application to withdraw must be approved.

The section heading also would be revised to indicate that it relates to "Statement of quantity; charges and liens."

4. It is proposed to amend section 144.34(a), relating to transfers to another warehouse, by adding a sentence at the end of the paragraph to indicate that the quantities of goods so transferred will be subject to the joint determination of the warehouse proprietor and the cartman, lighterman, or private bonded carrier, as provided in proposed section 19.6.

5. It is proposed to amend section 144.38(e), relating to the permit for release of merchandise, to indicate that when the duties and other charges have been paid, a permit on Customs Form 7505–A must be issued and delivered to the person making the warehouse withdrawal.

6. It is proposed to add a new section 144.39, relating to the permit to transfer and withdraw merchandise, to indicate that if all legal and regulatory requirements are met, the appropriate Customs officer must approve the application to transfer or withdraw merchandise from a bonded warehouse by endorsing the permit copy and returning it to the applicant. The approved permit must be presented by the withdrawer to the warehouse proprietor as evidence of Customs authorization of the transfer or withdrawal. The approval permit copy must be retained in the warehouse entry file of the proprietor. Goods covered by permit may be retained in the bonded warehouse at the option of the proprietor.

7. It is proposed to amend section 144.41(g), relating to failure to enter merchandise, by adding a phrase to indicate that the five day period for entry of merchandise after its arrival may be extended.

AUTHORITY

These amendments are proposed under the authority of R.S. 251, as amended, secs. 311, 312, 555, 556, 557, 623, 624, 646a, 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 759, as amended, 67 Stat. 520 (19 U.S.C. 66, 1311, 1312, 1555, 1556, 1557, 1623, 1624, 1646a).

COMMENTS

Before adopting this proposal, consideration will be given to any written comments, preferably in triplicate, that are submitted timely

to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2426, Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document was John E. Elkins, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

EXECUTIVE ORDER 12291

The proposed regulation is not a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604), are applicable to this proposal. Accordingly, an initial regulatory flexibility analysis prepared by Customs Office of Economic Analysis is attached to this document as Appendix A. Comments on the analysis are also solicited and should accompany comments submitted on the proposal.

PAPERWORK REDUCTION ACT

The proposed regulation is subject to the Paperwork Reduction Act of 1980, Pub. L. 96–511. Accordingly, applicable proposed sections of this document are subject to clearance by the Office of Management and Budget.

PROPOSED AMENDMENTS TO THE REGULATIONS

It is proposed to amend Parts 10, 18, 19, 24, 113, 125, 132, 142 and 144, Customs Regulations (19 CFR Parts 10, 18, 19, 24, 113, 125, 132, 142, 144), as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. It is proposed to amend that part of paragraph (a) before the colon and paragraph (c)(2) of section 10.62 by revising them to read as follows:

10.62 Bunker fuel oil.

(a) *Withdrawal under section 309, Tariff Act of 1930, as amended.* When all the bunker fuel oil in a Customs bonded tank is intended only for lading duty free as supplies on vessels under section 309 of the Tariff Act of 1930, as amended, delivery of the oil, by Customs bonded carrier, cartman, or lighterman (including bonded pipelines), under withdrawals on Customs Form 7506, either single or monthly (blanket), may be made without the presence of a Customs officer. When a blanket withdrawal is filed and a partial release takes place, the partial release procedure set forth in section 19.6(d) of this chapter shall be followed for each partial release. However, each abstract copy of Customs Form 7506 shall include the following additional information:

* * * * * * *

(c) * * *

(2) *Delivering carrier receipt.* The receipt of the delivering carrier on a copy of Customs Form 7506 for fuel oil which has been blended under subparagraph (1) of this paragraph with components classifiable at different rates of duty shall show, for each warehouse entry number and withdrawal number involved, the types and quantity of oil received.

* * * * * * *

2. It is proposed to amend paragraph (e) of section 10.62 by removing the last sentence.

3. It is proposed to amend section 10.62a by revising it to read as follows:

10.62a Blanket withdrawals for certain merchandise.

(a) *Generally.* Under this section, a blanket withdrawal on Customs Form 7506 may be filed for all or part of any merchandise, except fuel oil covered under section 10.62, for use on qualified vessels. The procedure for the blanket withdrawal and partial releases after the initial release are the same as those provided in section 19.6(d) of this chapter, except as noted in paragraph (c).

(b) Reserved

(c) *Partial release.* A partial release on Customs Form 7506, in duplicate, or in triplicate if an extra copy is required by the district director, shall be presented to the warehouse proprietor or placed in the proprietor's entry file under the partial release procedure set forth in section 19.6(d) of this chapter, as merchandise is needed for delivery to a using vessel. The original of the partial release document shall accompany the merchandise for delivery to the Customs officer who will supervise lading, or if a Customs officer does not physically supervise lading, to the master of the vessel. The original shall be returned to the proprietor for record purposes after the Customs officer or master of the vessel, as appropriate, has certified lading of the goods described in the document.

4. It is proposed to amend the second sentence of paragraph (c) (3) of section 10.65 by substituting "warehouse proprietor" for "Customs warehouse officer" and "5 years" for "3 years".

5. It is proposed to modify the first sentence of paragraph (c)(4) of section 10.65 by adding the words "by the warehouse proprietor" after "and shall be inventoried".

* * * * * * *

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. It is proposed to amend paragraph (a) of section 18.2 by revising it to read as follows:

18.2 Receipt by carrier; manifest.

(a)(1) *Merchandise other than from warehouse delivered to bonded carrier.* Except as set forth in subparagraph (2) below, when merchandise is delivered to a bonded carrier for transportation in bond, the merchandise shall be laden on the conveyance under the supervision of Customs unless the transporting conveyance is not to be sealed with Customs approved seals or the lading inspector accepts the check of the carrier as to the merchandise laden thereon. The carrier's receipt shall be given immediately to the lading inspector on the Customs in bond document covering the merchandise. In the case of a TIR carnet, the receipt shall be given on the appropriate vouchers in the following form:

Received the cargo listed herein for delivery to Customs at the indicated port of destination or exportation, or for direct exportation. _____ Name of Carrier (or Exporter) _____
Attorney or Agent of Carrier (or Exporter) (Date) _____

(2) *Merchandise delivered from warehouse.* When merchandise is delivered from the warehouse to a bonded carrier for transportation in bond, supervision of lading shall be accomplished in accordance with the procedure set forth in section 19.6(b) of this chapter.

* * * * * * *

2. It is proposed to amend paragraph (b) of section 18.2 by inserting a sentence between the third and fourth sentences to read as follows:

18.2 Receipt by carrier; manifest.

* * * * * * *

(b) * * * Quantities of goods transported in bond from a Customs bonded warehouse shall be accounted for under the procedures set forth in section 19.6 of this chapter. * * *

3. It is proposed to amend paragraph (e) of section 18.3 by substituting "Part 125" for "Part 21".

4. It is proposed to add a new paragraph (i) to section 18.4 to read as follows:

18.4 Sealing conveyances and compartments; labeling packages; warning cards.

* * * * * * *

(i) *Removal of seals.* Except as provided in section 18.3(d) of this chapter, seals affixed under this section shall be removed only under Customs supervision.

* * * * * * *

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. It is proposed to amend paragraph (a)(4), that portion of paragraph (c) before the colon and subparagraph (c)(3) of section 19.1 by revising them to read as follows:

19.1 Classes of Customs warehouses.

(a) * * *

(4) *Class 4.* Bonded yards or sheds for the storage of heavy and bulky imported merchandise; stables, feeding pens, corrals, or other similar buildings or limited enclosures for the storage of imported animals; and tanks for the storage of imported liquid merchandise in bulk.

* * * * * * *

(c) *Construction.* When parts of buildings are used as Customs bonded warehouses, the bonded and nonbonded portions thereof shall be effectively separated by partitions of substantial materials and construction erected in such a manner as to render it impossible for unauthorized personnel to enter the premises without such violence as to make the entry easy to detect. The partitions may be constructed of raised expanded metal (steel), steel chain-link fence fabric, or wood materials and shall comply with the following specifications:

* * * * * * *

(3) *Wood.* Wood partitions shall be constructed of not less than 1 inch boards (dressed if desired) of uniform length between supports, nailed with not less than ten penny nails to not less than 2 × 4 inch stud framing and held in place by ⅛ × 2 inch metal cover-strips secured over the nailed ends, with carriage bolts through the boards and partition framing. Plywood of not less than ¾ inch thickness may be substituted for the 1 inch thick wood boards providing it is erected in the same manner prescribed for the boards. Gates may be constructed of any of the materials specified for partitions. Depending on their size and swing, the gates shall be constructed in such a manner, and of materials of sufficient strength, to preclude any possible sagging condition. The specifications set forth in this paragraph shall be applicable to all partitions (including gates) constructed, reconstructed, renovated, or otherwise installed or altered on or after October 28, 1976.

2. It is proposed to revise paragraphs (a), (c), and (d) and to add new paragraphs (f) and (g) in section 19.2 to read as follows:

19.2 Application to bond; bond; renewal of.

(a) *Application.* An owner or lessee desiring to establish a bonded warehouse facility shall make written application to the district director wherein the warehouse is located, describing the premises, giving its location, and stating the class of warehouse desired. The application shall be accompanied by the fee required by section 19.5 of this chapter to establish a warehouse.

Applications for renewals of a warehouse facility shall be filed annually with the district director. A fee as prescribed by section 19.5 of this chapter shall accompany the request. Except in the case of a class 2 or class 7 warehouse, the application shall state whether the warehouse facility is to be operated only for the storage or treatment of merchandise belonging to the applicant or whether it is to be operated as a public bonded warehouse. If the warehouse facility is to be operated as a private bonded warehouse, the application also shall state the general character of the merchandise to be stored therein, and provide an estimate of the maximum duties and taxes which will be due on all merchandise in the bonded warehouse at any one time. A warehouse facility will be determined by street address, location, or both. For example, if a proprietor has two warehouses located at one street address and three warehouses located at three different street addresses the two located at one address would be considered as one warehouse facility and the three located at three different addresses would each be considered as separate warehouse facilities.

* * * * * * *

(c) *Bond, generally.* On approval of the application to bond a warehouse of class 2, 3, 4, 5, or 8, a bond shall be executed in the form prescribed by T.D. ——.

(d) *Bond for proprietor's manufacturing warehouse, class 6, and bonded smelting and refining warehouse, class 7.*

On approval of the application to bond a proprietor's manufacturing warehouse, class 6, a bond shall be executed in the form prescribed by T.D. ——. In the case of a bonded smelting and refining warehouse, class 7, the bond shall be executed with the required number of copies and in the form prescribed by T.D. ——.

* * * * * * *

(f) As a condition of approval of the application, the district director may order an inquiry by a Customs officer into the qualifications, character, and experience of the applicant, and into the security, suitability, and fitness of the facility.

(g) The district director shall promptly notify the applicant in writing of his decision to approve or deny the application to bond the warehouse. If the application is denied the notification shall state the grounds for denial which need not be limited to those set forth in section 19.3(e). The applicant may seek review of the decision to deny under the provisions of section 19.3(f) of this chapter within 10 days after notification.

3. It is proposed to amend section 19.3 by revising it to read as follows:

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19.3 Bonded warehouses; alterations; suspensions; discontinuance.

(a) *Alterations.* Alterations to a warehouse may be made with the permission of the district director of the district in which the facility is located.

(b) *Suspensions.* The use of all or part of a bonded warehouse or bonded floor space may be temporarily suspended by the district director for a period not to exceed one year on written application of the proprietor if there are no bonded goods in the area. Upon written application of the proprietor and upon the removal of all nonbonded goods, if any, the premises may again be used for the storage of bonded goods. If the application is approved, the district director shall indicate the approval by endorsement on the application. Rebonding will not be necessary.

(c) *Discontinuance.* If a proprietor wishes to discontinue the bonded status of the warehouse, he shall make written application to the district director. The district director shall not approve the application until all goods in the warehouse are transferred to another bonded warehouse without expense to the Government. To reestablish the bonded warehouse, application shall be made and approved under the provision of section 19.2 of this chapter.

(d) *Employee lists.* The district director may make a written demand upon the proprietor to submit, within 30 days after the date of demand, a written list of the names, addresses, social security numbers, and dates and places of birth of all persons employed by the proprietor in the carriage, receiving, storage, or delivery of any bonded merchandise. If a list has been previously furnished, the proprietor shall advise the district director in writing of the names, addresses, social security numbers and dates and places of birth of any new personnel employed by him in the carriage, receiving, storage, or delivery of bonded merchandise within 10 days after such employment. For the purpose of this part a person shall not be deemed to be employed by a warehouse proprietor if he is an officer or employee of an independent contractor engaged by the warehouse proprietor to load, unload, transport, or otherwise handle bonded merchandise.

(e) *Revocation or suspension for cause.* The district director may revoke or suspend for cause the right of a proprietor to continue the bonded status of the warehouse for any ground specified in this paragraph. An action to suspend or revoke the right to operate a bonded warehouse shall be taken in accordance with the procedures set forth in paragraph (f) of this section. If the bonded status is revoked or suspended for cause, the district director shall require all goods in the warehouse to be transferred to a bonded warehouse without expense to the Government. The bonded status of a warehouse may be revoked or suspended for cause if:

(1) The approval of the application to bond the warehouse was obtained through fraud of the misstatement of a material fact;

(2) The warehouse proprietor refuses or neglects to obey any proper order of a Customs officer or any Customs order,

rule, or regulation relative to the operation or administration of a bonded warehouse;

(3) The warehouse proprietor or an officer of a corporation which has been granted the right to operate a bonded warehouse is convicted or or has committed acts which would constitute a felony or a misdemeanor involving theft, smuggling, or a theft-connected crime;

(4) The warehouse proprietor does not provide secured facilities or properly safeguard merchandise within the bonded warehouse;

(5) The warehouse proprietor fails to furnish a current list of names, addresses, and other information required by section 19.3(d);

(6) The bond required by section 19.2 (c) or (d) of this chapter is determined to be insufficient in amount or lacking sufficient suretires, and satisfactory new bond with goods and sufficient sureties is not furnished within a reasonable time; or

(7) Bonded merchandise has not been stored in the warehouse for a period of 2 years.

(f) *Procedures for revocation or suspension for cause.* The district director may at any time serve notice in writing upon any proprietor of a bonded warehouse to show cause why his right to continue the bonded status of his warehouse should not be revoked or suspended for cause.

Such notice shall advise the proprietor of the grounds for the proposed action and shall afford the proprietor an opportunity to respond in writing within 30 days. Thereafter, the district director shall consider the allegations and responses made by the proprietor unless the proprietor in his response requests a hearing. If a hearing is requested, it shall be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the proprietor's request. The proprietor may be represented by counsel at such hearing, and all evidence and testimony of witnesses in such proceedings, including substantiation of the allegations and the responses thereto shall be presented, with the right of cross-examination to both parties. A stenographic record of any such proceeding shall be, made and a copy thereof shall be delivered to the proprietor of the warehouse. At the conclusion of the hearing, the hearing officer shall promptly transmit all papers and the stenographic record of the hearing to the Regional Commissioner together with his recommendation for final action. The proprietor may submit in writing additional views or arguments to the Regional Commissioner following a hearing on the basis of the stenographic record, within 10 days after delivery to him of a copy of such record. The Regional Commissioner shall thereafter render his decision in writing, stating his reasons therefor. Such decision shall be served on the proprietor of the warehouse, and shall be considered the final administrative action.

4. It is proposed to amend section 19.4 by revising it to read as follows:

19.4 Customs supervision.

The character and extent of Customs supervision to be exercised in connection with any warehouse facility or transaction provided for in this part shall be in accordance with section 161.1 of this chapter. Independent of any need to appraise or classify merchandise, the district director may authorize a Customs officer to supervise any transaction or procedure at the bonded warehouse facility. Such supervision may be performed through periodic audits of the warehouse proprietor's records, quantity counts of goods in warehouse inventories, spot checks of selected warehouse transactions or procedures or reviews of conditions of recordkeeping, security, or storage in a warehouse facility. The warehouse proprietor shall permit access to the warehouse by any Customs officer.

5. It is proposed to amend section 19.5 by revising it to read as follows:

19.5 Fees

Each warehouse proprietor will be charged a fee to establish, alter, or relocate a warehouse facility and an annual fee thereafter which shall be determined under the provisions of 19 U.S.C. 1555 and 31 U.S.C. 483a. The fees will be revised annually and published in the Federal Register.

6. It is proposed to amend section 19.6 by revising it to read as follows:

19.6 Deposits, withdrawals, partial releases and sealing requirements.

(a) *Deposit in warehouse.* The district director ma authorizee the deposit of merchandise in designated bonded warehouses, without physical supervision by a Customs officer. Goods for which a warehouse or rewarehouse entry has been accepted, according to the procedures in Part 144, Subpart B, of this chapter, shall be examined or inspected at the place of unlading, bonded warehouse, or other location as ordered by the district director. When merchandise is deposited in a proprietor's warehouse the proprietor will be held liable under his bond for the quantity and condition of merchandise reflected on entry documentation adjusted by (1) any discrepancy noted under Part 158, Subparts A and B, of this chapter, and (2) any discrepancy report made jointly on the warehouse entry permit copy (Customs Form 7502–A), i.e., an agreement reached by the warehouse proprietor and the bonded carrier or licensed cartman or lighterman delivering the goods to the warehouse, or an independent weigher, gauger, measurer, and signed by an authorized representative of the above. A copy of any joint report of discrepancy shall be promptly provided to the district director.

(b) *Withdrawal and removal from warehouse.* The district director may authorize the withdrawal and removal of merchandise, without physical supervision or examination by a Customs officer under permit issued under the procedure set forth in section 144.39 of this chapter. When a withdrawal or removal is not physically supervised by a Customs officer, the warehouse proprietor will be relieved of liability under

its bond only for the merchandise in its warehouse in the condition and quantity as shown on the application for withdrawal or removal, adjusted by any discrepancy report made jointly by the warehouse proprietor, and the licensed cartman or lighterman, bonded carrier, weigher, gauger, or measurer and signed by the authorized representative of the above. The adjustments will be noted on the permit copy. A copy of any joint report of discrepancy shall be promptly provided to the district director.

(c) *Agreement on quantity and condition required.* When the warehouse proprietor and the bonded carrier, cartman or lighterman, or weigher, gauger, or measurer cannot make a joint determination under subparagraph (a) or (b) of this section, the merchandise may not be removed until they have come to agreement on the quantity and condition of the shipment.

(d) *Partial releases.*

(1) *Generally.* Goods in Customs custody may be withdrawn without payment of duty when permitted by law, by blanket withdrawal and thereafter removed from the warehouse in partial releases by the warehouse proprietor. When a withdrawer desires to use the partial release procedure for all or part of the merchandise covered by a warehouse entry, he shall submit to the district director a blanket withdrawal on the appropriate withdrawal form. The form shall bear the words "BLANKET WITHDRAWAL" in capital letters conspicuously printed or stamped in the top margin. The summary statement described in section 144.32 of this chapter shall not be included. Merchandise for which a duty-paid withdrawal is required is not eligible for the partial release procedure under this section, except as provided in section 10.62(e) of this chapter.

(2) *Form Distribution.* The blanket withdrawal shall be executed in triplicate, or in quadruplicate if an additional copy is required for control purposes in local administration. Upon approval of the blanket withdrawal by the district director, the original shall be returned to the withdrawer for forwarding to the warehouse proprietor to serve as a permit to withdraw the merchandise covered therein upon the filing of requests for partial release under subparagraph (e) of this section. The original shall be retained in the warehouse proprietor's records, as provided in section 19.12(a)(2). One copy shall be returned to the withdrawer for use in preparing requests for partial release. One copy (statistical) shall be forwarded to the Bureau of the Census, where applicable. Merchandise for which a blanket withdrawal has been approved may thereafter be released by the warehouse proprietor in the individual partial releases, but the goods are still in Customs custody while physically located in the warehouse.

(3) *Numbering of forms, discrepancy report.* Each partial release shall be documented by the withdrawer through presentation of a copy of the blanket withdrawal document to the warehouse proprietor, or by placing a copy in the proprietor's entry file. Each such release shall be consecutively numbered, and the number shall appear im-

mediately after the serial number of the blanket withdrawal. Each copy shall bear the summary statement described in section 144.32 of this chapter. Any joint discrepancy report of the proprietor and the bonded carrier, licensed cartman or lighterman, or weigher, gauger, or measurer for a partial release shall be made on the copy. A copy of any joint report of discrepancy shall be promptly provided to the district director. A copy of the partial release document shall be retained in the records of the warehouse proprietor, as provided in section 19.12(a)(2). The warehouse proprietor shall account for all goods covered by a blanket withdrawal through individual partial release documents before the entry folder is transmitted to Customs under section 19.12(a)(4).

(4) *Quantity of relaese.* Partial releases may not be removed in a quantity of less than an entire package of, if in bulk, less than one ton in weight.

(e) *Affixing or breaking of seals.* The district director may authorize a warehouse proprietor to (1) break Customs in-bond seals affixed under section 18.4 of this chapter, or under any Customs order or directive, on any vehicle or container of goods entered for warehouse upon arrival of the vehicle or container at the warehouse; or (2) affix Customs in bond seals to any vehicle or container of goods for which a withdrawal document has been approved for movement in bond. The affixing or breaking of seals so authorized, shall be deemed to have been done under Customs supervision. The proprietor shall report to the district director any seal found, upon arrival of the vehicle or container at the warehouse, to be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the district director.

7. It is proposed to amend section 19.8 by removing the words "and under the supervision of the Customs warehouse officer" from the first sentence.

8. It is proposed to amend Part 19 by adding a new section 19.9 to read as follows:

19.9 General order, abandoned, and seized merchandise.

(a) *Acceptance of merchandise.* A proprietor of a general order warehouse shall accept general order, abandoned, or seized goods and articles into the warehouse only upon order of the district director on Customs Form 6043 (Delivery Ticket), as presented by the cartman or lighterman. A joint determination shall be made by the warehouse proprietor and the cartman or lighterman of the quantity and condition of the goods or articles so delivered to the warehouse. Any discrepancy between the quantity and condition of the goods and that reported on Customs Form 6043 shall be reported to the district director.

(b) *Recording and storing.* General order, abandoned, and seized goods and articles shall be recorded and stored in the warehouse as prescribed by section 19.12.

(c) *Release of merchandise.* Merchandise in general order may be released by the warehouse proprietor, after Customs inspect-

ion or examination as ordered by the district director, to the consignee or person named in a release order. The release shall be made under the provisions of section 141.11 of this chapter. General order goods which have been unclaimed under section 127.11 of this chapter, voluntarily abandoned, or seized and forfeited may be released for transfer to the place of sale upon presentation to the warehouse proprietor of an approved copy of Customs Form 5251 (Order to Transfer Merchandise for Public Auction (Sale)), and an approved copy of Customs Form 6043 (Delivery Ticket). The quantity and condition of the goods so transferred shall be determined jointly by the proprietor and the cartmen or lighterman picking up the goods for delivery to the place of sale. Any discrepancies shall be noted on the the delivery ticket, a copy of which shall be sent to the district director. Seized goods that are released for a purpose other than sale may be released from warehouse only upon such written terms and conditions as directed by the district director on Customs Form 6043.

9. It is proposed to amend section 19.10 by substituting "warehouse proprietor" for "warehouseman".

10. It is proposed to amend paragraph (d) of section 19.11 by adding the following between the second and third sentences:

19.11 Manipulation in bonded warehouses and elsewhere.

* * * * * * *

(d) * * * The district director may approve a blanket application to manipulate on Customs Form 3499, for a period of up to one year, for a continuous or a repetitive manipulation. The warehouse proprietor must maintain a running record of manipulations performed under a blanket application, indicating the quantities before and after each manipulation. The record must show what took place at each manipulation describing marks and numbers of packages, location within the facility, quantities, and description of goods before and after manipulation. The district director is authorized to revoke a blanket approval to manipulate and require the proprietor to file individual applications if necessary to protect the revenue, administer any law or regulation, or both. * * *

11. It is proposed to amend section 19.12 by revising it to read as follows:

19.12 Warehouse recordkeeping, storage and security requirements.

(a) *Recordkeeping.* The warehouse proprietor shall comply with the following recordkeeping requirements:

(1) *Record transactions.* All merchandise entered, manipulated, manufactured or removed from the bonded warehouse shall be recorded in the warehouse proprietor's accounting and inventory records by bond lot number. The records to be maintained are those which a prudent businessman in the same type of business can be expected to maintain. The records are to be kept in sufficient detail to permit effective

and efficient determination by Customs of the proprietor's compliance with these regulations and the correctness of his annual submission;

(2) *Maintain entry folders.* Entry folders shall be maintained and kept up to date by filing all receipts, damage or shortage reports, manipulation requests, specific removals and blanket removals and the partial release/permit copy for each removal within two business days after the event occurs;

(3) *Extraordinary shortage or damage.* Extraordinary (1% or more of the value of merchandise in an entry) shortage or damage shall be immediately brought to the attention of the district director;

(4) *Review of entry folder.* When the final withdrawal of merchandise relating to a specific general order or seizure occurs, the warehouse proprietor shall (i) review the entry folder to insure that all necessary documentation is in the folder accounting for the merchandise covered by the entry and (ii) file the entry folder with Customs within two business days after final withdrawal.

(5) *Warehouse proprietor submission.* Except as provided in section 19.19(b), relating to the manufacturer engaged in smelting or refining, or both, the warehouse proprietor shall file with the Regional Director, Regulatory Audit, within 45 days from the end of his business year, a Warehouse Proprietor's Submission in the form prescribed by T.D.——

(6) *Merchandise not withdrawn.* The entry folder for merchandise not withdrawn during the general order period shall be submitted to the district director upon receipt from Customs of the Customs Form 6043.

(b) *Security and storage.* The warehouse proprietor shall comply with the following security and storage requirements:

(1) *Supervision by warehouse proprietor.* The warehouse proprietor shall supervise all receipts, deliveries, sampling, recordkeeping, repacking, or manipulating of merchandise in a bonded warehouse;

(2) *Inspection and security of entry folders.* The entry folders maintained by the warehouse proprietor shall be kept in a secure area and shall be made available for inspection by Customs at anytime;

(3) *Security of warehouse.* The warehouse proprietor shall maintain its warehouse facility and establish procedures adequate to insure the security of merchandise located in the bonded area. This shall be accomplished by meeting the standards and recommended specifications contained in T.D. 72–56 to the extent those standards and recommendations do not conflict with any local, state or Federal standard for the safe and sanitary storage of merchandise. In the event of a conflict any local, state, or Federal standard shall control;

(4) *Bonded tanks.* All inlets and outlets to bonded tanks shall be secured with locks or in-bond seals.

(5) *Safe and sanitary storage.* Merchandise in the bonded area shall be stored in a safe and sanitary manner to min-

imize damage to the merchandise, avoid hazards to persons, and meet local, state and Federal requirements applicable to specific kinds of goods. All trash and waste shall be promptly removed from the bonded area. No fires shall be permitted in the warehouse except where necessary in connection with manipulating or processing in warehouses of the class 6, 7, or 8 type. Aisles shall be established and maintained, and doors and entrances left unblocked for access by Customs officers and warehouse proprietor personnel.

(6) *Manner of storage.* Packages shall be received in the warehouse according to their marks and numbers. Packages containing weighable or gaugable merchandise not bearing shipping marks and numbers shall be received under the weighers or gaugers numbers. Packages with exceptions due to damage or loss of contents, or not identical as to quantity or quality of contents shall be stored separately. The warehouse proprietor shall mark all shipments for identification, showing the general order or warehouse entry number or seizure number and the date of the general order, entry, or delivery ticket in the case of seizures. All containers covered by a given warehouse entry, general order or seizure shall be stored in the same location and not mixed with goods covered by any other entry, general order or seizure unless approval has been given in writing by the district director for an exception from this requirement. The proprietor must provide, upon request by a Customs officer, a record balance of goods covered by any warehouse entry, general order, or seizure so a physical count can be made to verify the accuracy of the record balance.

12. It is proposed to amend paragraph (a) of section 19.13 by substituting "the district director" for "Headquarters, U.S. Customs Service".

13. It is proposed to amend paragraph (d) of section 19.13 by removing the words "in duplicate", and by substituting a period for the comma after the words "district director" and removing the remainder of the sentence.

14. It is proposed to amend paragraph (g) of section 19.13 to read as follows:

19.13 Requirements for establishment of warehouse.

* * * * * * *

(g) *Secure storage.* Each bonded manufacturing warehouse shall have a secured area separated from the remainder of the premises to be used exclusively for the storage of

imported merchandise, domestic spirits, and merchandise subject to internal-revenue tax transferred into warehouse for manufacture. A like area shall be provided to be used exclusively for the storage of products manufactured in the warehouse. The area shall be secured to prevent any unauthorized person from having access thereto and the goods therein shall be arranged in a manner to assist a Cusg toms officer in making the required examination or takinsamples for analysis.

15. It is proposed to amend paragraphs (b), (c), and (d) of section 19.14 to read as follows:

19.14 Materials for use in manufacturing warehouse.

* * * * * * *

(b) *Bond required.* Before the transfer of the merchandise to the manufacturing warehouse is permitted, a bond on Customs Form 7571 in an amount equal to double the estimated duties shall be required unless a bond in the form prescribed by T.D. ____ has been given.

(c) *Domestic merchandise.* When the proprietor of any bonded manufacturing warehouse desires to receive therin any domestic merchandise, except merchandise subject to internal-revenue tax, to be used in connection with the manufacture of articles permitted to be manufactured in such warehouse, including packages, coverings, vessels, and labels used in putting up such articles, an application in the following form shall be sent to the district director for approval and after approval retained by the warehouse proprietor:

APPLICATION TO RECEIVE FREE MATERIALS

Port of_____
_____, 19__.

TO THE DISTRICT DIRECTOR:

Application is hereby made to receive into the bonded manufacturing warehouse known as _____, situated at_____ the following described articles and materials:

Marks	Nos.	Description	Quantity	Value

_____
(Signature)

Port_____, _____19____

To the warehouse proprietor in charge of the bonded manufacturing warehouse specified above:

The above described articles and materials are hereby permitted to be received into the warehouse in your charge, to be

used therein in connection with the manufacture of articles as authorized by law.

_____
District Director

(d) *Domestic spirits and wines.* For the transfer of domestic spirits from the bonded premises of a distilled spirits plant to a bonded manufacturing warehouse, or for the transfer of domestic wines from a bonded wine cellar to a bonded manufacturing warehouse, bond on Customs Form 7571 shall be required unless the warehouse is covered by a bond in the form prescribed by T.D. ——.

* * * * * * *

16. It is proposed to amend paragraph (a) of section 19.15 by substituting the word "Customs" for "a Customs officer" in the last sentence.

17. It is proposed to amend paragraph (j) of section 19.15 by substituting the words "certified by the warehouse proprietor" for "verified by the Customs warehouse officer in charge of the warehouse" in the first sentence.

18. It is proposed to amend the first and last sentences of paragraph (a), paragraphs (b) and (c), the last sentence of paragraph (g) (1), and the "Application and Permit for Transfer of Scraps, Cuttings, and Clippings" in paragraph (h) of section 19.16 to read as follows:

19.16 Cigar-manufacturing warehouses.

(a) *Manufacture of cigars under section 311, Tariff Act of 1930, as amended.* Tobacco to be used in the manufacture of cigars in bond under the provisions of section 311, Tariff Act of 1930, as amended, shall be entered for warehouse but may be transferred directly from the importing vessel or from a bonded warehouse of class 2 or 3 into a bonded manufacturing warehouse of class 6 and stored in separate compartments therein under the warehouse proprietor's locks pending its withdrawal for use in the manufacture of cigars. * * * The cigars so returned shall be verified by the warehouse proprietor against the schedule which shall be certified by him as to the cigars returned, and the original and one copy returned to the taxpayer who returned the cigars.

(b) *Entry of Cigars.* Upon the removal of cigars from the warehouse the proprietor shall make appropriate entry in his records of the quantity and class of the cigars.

(c) *Record.* A record of all tobacco received in a bonded manufacturing warehouse and delivered from storage compartments to the manufacturing department shall be kept by the warehouse proprietor.

* * * * * * *

(g) * * *

(1) * * * The taxes covered by the return shall be secured by the Proprietor's Manufacturing Warehouse Bond in the form prescribed by T.D.——.

* * * * * * *

(h) * * *

APPLICATION AND PERMIT FOR TRANSFER OF SCRAPS, CUTTINGS, AND CLIPPINGS

Port of_____
_____, 19__

THE DISTRICT DIRECTOR:

Sir: Application is hereby made to transfer ____ pounds of scraps, cuttings, and clippings of tobacco upon which duty has been paid from our bonded manufacturing warehouse, class 6, to _____, factory No. ____, district ____, state of ____.

_____

Proprietor of Bonded Manufacturing Warehouse, Class 6

_____

Port of _____
_____, 19__

The above application is hereby granted.

_____
District Director

_____

Port of _____
_____, 19__

I hereby certify that ____ pounds of scraps, cuttings, and clippings of tobacco, upon which duty has been paid have been delivered from the bonded manufacturing warehouse, class 6, of _____ for transfer to ____.

_____
Warehouse Proprietor

19. It is proposed to amend paragraphs (a), (c), (e) and the first sentence of paragraph (g) of section 19.17 to read as follows:

19.17 Application to establish warehouse; bond.

(a) *Application.* Application for the bonding of a plant of a manufacturer engaged in the smelting or refining, or both, of metal-bearing materials as provided for in section 312, Tariff Act of 1930, as amended,[22] to reduce the metal content thereof to an unwrought metal, or metal in the form of oxides or other compounds which are obtained directly from the treatment of the dutiable materials provided for in Schedule 6, Part 1 or 2, Tariff Schedules of the United States (19 U.S.C. 1202), shall be made by the manufacturer, to the district director of the district in which such plant is situated, giving the location of the premises and setting forth the work proposed to be carried on therein, accompanied by the fee to establish a warehouse as prescribed by section 19.5.

* * * * * * *

(c) *Discontinuance.* At the request of the proprietor the bonded status of the warehouse may be discontinued at any time, provided the district director approves such discontinuance and the

proprietor complies with directions of the district director with respect to the disposition of merchandise which may remain in the warehouse.

* * * * * * *

(e) *Bond.* Upon the arrival of imported metal-bearing material in any form for the purpose of being smelted or refined, or both, in bond at a port where a bonded smelting or refining warehouse is established, it shall be entered for warehouse. A bond on Customs Form 7555 shall be filed with each warehouse entry unless a blanket smelting and refining bond in the form prescribed by T.D. —— has been filed. The district director shall thereafter issue a permit to the inspector to send such metal bearing materials from the importing vessel or vehicle by designated bonded vessels or vehicles to the smelting and refining warehouse named in the entry.

* * * * * * *

(g) *Statement of inventory and bond charges.* Where two or more smelting and refining warehouses are included under one blanket smelting and refining bond, an overall statement shall be filed by the principal named in the bond with each district director involved by the 28th of each month, showing the inventory as of the close of the preceding month, of all metals on hand at each plant covered by the blanket bond and the total of bonded charges for all plants. * * *

20. It is proposed to modify the third sentence of paragraph (a) and the first sentence of paragraph (b) of section 19.19 to read as follows:

19.19 Manufacturer's records; annual statement.

(a) * * * If losses are to be claimed under paragraph (c) of said headnote, a record shall be kept which will become a part of the annual statement described in paragraph (b) of this section * * *

(b) Every manufacturer engaged in smelting or refining, or both, shall file with the district director of Customs for the district in which the plant is located an annual statement for the fiscal year, in lieu of the warehouse proprietors submission required by section 19.12, for the plant involved not later than 60 days after the termination of that fiscal year * * *

* * * * * * *

21. It is proposed to modify section 19.21(b) by adding" section 19.4 and" before the words "the commercial practice".

22. It is proposed to revise section 19.29 to read as follows:

19.29 Sealing of bins or other bonded space.

The outlets to all bins or other space bonded for the storage of imported wheat shall be sealed by affixing locks or in bond seals to the rope or chain which controls the gear mechanism for opening the outlets, or such other method which will effectively prevent the removal of, or access to the wheat in the bonded space except under such supervision as required by sections 19.4 and 161.1 of this chapter.

23. It is proposed to amend the third sentence of section 19.34 by substituting "appropriate Customs officer" for "supervising Customs agent".

* * * * * * *

PART 22—DRAWBACK

It is proposed to amend paragraph (d) of section 22.28 to read as follows:

22.28 Continuous custody.

* * * * * * *

(d) *Merchandise entered for warehouse.* For purpose of this part, in the case of merchandise entered for warehouse, Customs custody shall be deemed to cease when duty has been paid and the district director has authorized the withdrawal of the merchandise.

* * * * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. It is proposed to remove paragraph (a) from section 24.12 and mark the paragraph "Reserved".

2. It is proposed to amend the first and fourth sentences of paragraph (c) and the first sentence of paragraph (f) of section 24.13 by revising them to read as follows:

24.13 Car, compartment, and package seals; kind, procurement.

* * * * * * *

(c) *Purchase of seals.* Bonded carriers of merchandise, commercial associations representing the foregoing or comparable organizations approved by the district director under paragraph (f) of this section, and bonded warehouse proprietors may purchase quantity supplies of in-bond and in-transit seals from manufacturers approved under the provisions of section 24.13a. * * * Carriers and bonded warehouse proprietors may purchase small emergency supplies of in-bond and in-transit seals from district directors, who will keep a supply of such seals for this purpose. * * *

* * * * * * *

(f) *District director approval required.* In-bond seals may be purchased only by a Customs bonded warehouse proprietor, a Customs bonded carrier, a nonbonded carrier permitted to transport articles in accordance with section 553, Tariff Act of 1930, as amended (19 U.S.C. 1553) or in the case of red in-bond and high security red in-bond seals, the carrier's commercial association or comparable representative approved by the district director. * * *

3. It is proposed to amend paragraph (d) of section 24.17 by revising it to read as follows:

24.17 Other services of officers; reimbursable.

* * * * * * *

(d) *Computation charge for reimbursable services.* The charge to be made for the services of a Customs officer on a regular workday during his basic 40-hour workweek shall be computed at a rate per hour equal to 137 percent of the hourly rate of regular pay of the particular employee with an addition equal to any night pay differential actually payable under 5 U.S.C. 5545. The rate per hour equal to 137 percent of the hourly rate of regular pay is computed as follows:

	Hours	*Hours*
Gross number of working hours in 52 40-hour weeks		2,080
Less:		
9 Legal public holidays—New Years Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day	72	
Annual Leave—26 days	208	
Sick Leave—13 days	104	384
Net number of working hours		1,696
Gross number of working hours in 52 40-hour weeks		2,080
Working hour equivalent of Government contributions for employee uniform allowance, retirement, life insurance and health benefits computed at 11½ percent of annual rate of pay of employee		239
Equivalent annual working hour charge to Customs appropriation		2,319
Ratio of annual number of working hours charged to Customs appropriation to net number of annual working hours 2319/1696=137 percent		

The charge to be made for the reimbursable services of a Customs officer to perform on a holiday or outside the established basic workweek shall be the amount actually payable to the employee for such services under the Federal Employee Pay Act of 1945, as amended (5 U.S.C. 5542(a), 5546), or the Customs overtime laws (19 U.S.C. 267, 1451), or both, as the case may be. When services of a Customs employee temporarily assigned to act as a Customs officer are performed by an intermittent when-actually-employed employee, the charge for such services shall be computed at a rate per hour equal to 108 percent of the hourly rate of the regular pay of such employee to provide for reimbursement of the Government's contribution under the Federal Insurance Contributions Act, as amended (25 U.S.C. 3101, *et seq.*) and employee uniform allowance. The time charged shall include any time within the regular working hours of the employee

required for travel between the duty assignment and the place where the employee is regularly employed excluding lunch periods, charged in multiples of 1 hour, any fractional part of an hour to be charged as 1 hour when the services are performed during the regularly scheduled tour of duty of the officer or between the hours of 8 a.m. and 5 p.m. on weekdays when the officer has no regularly scheduled tour of duty. In no case shall the charge be less than $1.

The necessary transportation expenses and any authorized per diem expenses of a Customs employee assigned to perform reimbursable services at a location at which he is not regularly assigned shall be reimbursed by the responsible party.

When a Customs officer is regularly assigned to duty at more than one location, the charge for his compensation and transportation expenses in going from one location to another shall be equitably apportioned among the parties concerned. However, no charge shall be made for transportation expenses when a Customs employee is reporting to as a first assignment, or leaving from as a last assignment, a place where he is regularly assigned to duty.

Upon a failure to pay such charges when due, or to comply with the applicable laws and regulations, the district director shall report the facts to the Regional Commissioner who shall take appropriate action to collect the charges.

* * * * * * *

PART 113—CUSTOMS BONDS

1. It is proposed to amend section 113.13 by removing paragraph (a) and marking it "Reserved" and by substituting *"Public gauger bond."* for the paragraph heading in paragraph (b).

2. It is proposed to amend paragraph (a) of section 113.14 by revising it and by adding new paragraphs (hh) and (ii) to section 113.14 to read as follows:

113.14 Bonds approved by the district director. * * *

(a) *Proprietor's Warehouse Bond.* Proprietor's Warehouse Bond, in the form set forth in T.D. —— in the amount of $5,000 on each building or area covered, but not to exceed $50,000 on all buildings or areas, unless the district director believes additional security is necessary. Buildings connected by loading platforms or sheds shall be considered as separate buildings. All reports, documents, and drawings submitted in connection with the bonding of the warehouse shall be filed with the bond.

* * * * * * *

(hh) *Proprietors manufacturing warehouse bond, class 6.* Proprietors manufacturing warehouse bond, class 6, in the form prescribed by T.D. —— in such amount as the district director deems necessary, but not less than $5,000 on each building or area and not more than $50,000 on all buildings or areas.

Buildings connected by loading platforms or sheds shall be considered as separate buildings.

(ii) *Blanket smelting and refining bond.* Blanket smelting and

refining bond in the form prescribed by T.D. —— in such amount as the district director deems necessary.

Sufficient copies of the bond shall be submitted to enable the district director to transmit one to each port at which the principal seeks to conduct business.

* * * * * * *

3. It is proposed to remove section 113.27 and mark the section "Reserved".

4. It is proposed to revise section 113.39(b) and the "Power of Attorney and Agreement" which appears after the colon in section 113.39(b) by substituting a reference to "Treasury Department Circular No. 154, Revised, dated July 1, 1978" for the reference to "Treasury Department Circular 154 dated October 31, 1969, as amended" in section 113.39(b) and the reference to "Treasury Circular No. 154, dated October 31, 1969, as amended" in the "Power of Attorney and Agreement".

* * * * * * *

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

1. It is proposed to remove paragraph (d) of section 125.31 and mark the paragraph "Reserved".

2. It is proposed to further amend section 125.31 by adding a new paragraph (g) to read as follows:

125.31 Documents used.

* * * * * * *

(g) Customs Form 7519—Combined Rewarehouse Entry and Withdrawal for Consumption and Permit.

3. It is proposed to amend paragraph (b) of section 125.33 to read as follows:

125.33 Procedure on receiving merchandise.

* * * * * * *

(b) *From bonded warehouse.* In case of withdrawals from bonded warehouse, the merchandise shall be released only to the proprietor of the warehouse, who shall acknowledge such release on the appropriate withdrawal or removal document.

* * * * * * *

PART 132—QUOTAS

It is proposed to amend section 132.15 by revising it to read as follows:

132.15 Withdrawal from warehouse prior to opening of quota.

Merchandise subject to a tariff rate quota entered for warehouse for which a withdrawal for consumption has been made in the manner prescribed in section 141.68(d) of this chapter prior

to the opening of the quota period, may not be accorded any quota benefit which may become effective after the time of presentation of such withdrawal, even though the merchandise was not physically removed from the warehouse until after the start of the tariff rate period. For the purposes of applying tariff rate quotas, the date that the warehouse withdrawal is presented shall be treated as the date the merchandise is withdrawn for consumption.

* * * * * * *

PART 142—ENTRY PROCESS

It is proposed to revise Bond Rider "R" which is set forth in section 142.5 by removing the comma from between the words "default" and "plus" in the third paragraph of the rider.

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. It is proposed to remove paragraph (b) of section 144.1 and mark the paragraph "Reserved".

2. It is proposed to amend section 144.22 by revising it to read as follows:

144.22 Endorsement of transfer on withdrawal form.

Transfer of the right to withdraw merchandise entered for warehouse shall be established by an appropriate endorsement on the withdrawal form by the person primarily liable for payment of duties before the transfer is completed, i.e., the person who made the warehouse or rewarehouse entry or a transferee of the withdrawal right of such person. Endorsement shall be made on whichever of the following withdrawal forms is applicable:

(a) Customs Form 7506 for merchandise to be withdrawn as vessel or aircraft supplies and equipment under section 10.60(b) of this chapter, or other conditionally free merchandise;

(b) Customs Form 7512 for merchandise to be withdrawn for transportation, exportation, or transportation and exportation;

(c) Customs Form 7519 for merchandise for which a combined entry for rewarehouse and withdrawal for consumption is filed; or

(d) Customs Form 7505 for (i) a duty paid warehouse withdrawal for consumption or (ii) withdrawal with no duty payment (diplomatic use).

3. It is proposed to add a new paragraph (c) to section 144.32 and revise the section heading to read as follows:

144.32 Statement of quantity; charges and liens.

* * * * * * *

(c) *Charges and liens.* Upon receipt of an application to withdraw merchandise the appropriate Customs officer shall determine whether there are any cartage, storage, labor, or any other charges due the Government in connection with the goods remaining unpaid or whether there is on file any notice of lien filed by a carrier. If there are no charges of liens or all charges and liens have been satisfied, and all other requirements of law or regulations have been met, the proprietors application to withdraw shall be approved.

4. It is proposed to amend paragraph (a) of section 144.34 by adding a sentence at the end of the paragraph to read as follows:

144.34 Transfer to another warehouse.

(a) *At the same port.* * * * The quantities of goods so transferred shall be subject to the joint determination of the warehouse proprietor and the cartman, lighterman, or private bonded carrier, as provided in section 19.6 of this chapter.

* * * * * * *

5. It is proposed to amend paragraph (e) of section 144.38 to read as follows:

144.38 Withdrawal for consumption.

* * * * * * *

(e) *Permit for release of merchandise.* When the duties and other charges have been paid, a permit on Customs Form 7505–A shall be issued and delivered to the person making the warehouse withdrawal.

6. It is proposed to amend Part 144 by adding a new section 144.39 to read as follows:

144.39 Permit to transfer and withdraw merchandise.

If all legal and regulatory requirements are met the appropriate Customs officer shall approve the application to transfer or withdraw merchandise from a bonded warehouse by endorsing the permit copy and returning it to the applicant. The approved permit shall be presented by the withdrawer to the warehouse proprietor as evidence of Customs authorization of the transfer or withdrawal. The approved permit copy shall thereafter be retained in the warehouse entry file of the proprietor. Goods covered by permit may be retained in the bonded warehouse at the option of the proprietor.

7. It is proposed to amend paragraph (g) of section 144.41 by revising it to read as follows:

144.41 Entry for rewarehouse.

* * * * * * *

(g) *Failure to enter.* If the rewarehouse entry is not filed before the expiration of 5 days after its arrival or any authorized extension, it shall be sent to the general order warehouse but

shall not be sold or otherwise disposed of as unclaimed until the expiration of the original warehouse entry bond period.

* * * * * * *

A. R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: January 27, 1982.
JOHN P. SIMPSON,
Acting Assistant Secretary of the Treasury.

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APPENDIX A

Initial Regulatory Flexibility Analysis on Proposed Customs Regulations Amendments Relating to Bonded Warehouses

Introduction

The U.S. Customs Service is proposing to amend Parts 10, 18, 19, 24, 113, 125, 132, and 144 of the Customs Regulations, relating to the control of merchandise in Customs bonded warehouses. The proposed amendments, if implemented, would entail a major change in the method of control of merchandise in such warehouses. The principal change would be the elimination of Customs warehouse officer (CWO) positions and warehouse support positions, to be replaced by periodic audits and spot checks of warehouse inventories. Bonded warehouse proprietors would incur certain additional responsibilities in the proper management of their operations.

The proposed amendments could have a number of economic effects on Customs bonded warehouses as well as on the U.S. Treasury and the general public. The Regulatory Flexibility Act requires that a "regulatory flexibility" analysis be prepared on proposed regulations which will have, or are likely to have, a "significant economic impact on a substantial number of small entities." Since many Customs bonded warehouses can be considered to be "small entities," an initial regulatory flexibility analysis has been prepared on the proposed amendments. This analysis, which appears below, will be modified into a "final" regulatory flexibility analysis subsequent to the receipt of public comments which will follow the publication of the proposed amendments in the Federal Register.

Statement of the Problem and Rationale for Customs' Actions

The present bonded warehouse control system utilized by the Customs Service, which generally requires the physical presence of a Customs warehouse officer, has been deemed to be an outdated system which is excessively costly. Indeed, a 1974 report of the General

Accounting Office stated that: "the U.S. Customs Service employs warehouse officers to maintain physical custody of goods in bonded warehouses. We reviewed the necessity of having warehouse officers in view of the inventory document controls maintained at the customhouse and the periodic physical inventories performed by Customs on goods in bonded warehouses. *The existing procedures for centrally controlling bonded goods at the customhouse, together with the bond protection of the Customs duties and the periodic physical inventory checks, are adequate for protecting Government revenues without having a warehouse officer present.*" (emphasis added)

In order to help establish a viable alternative to the present Customs bonded warehouse control system, the Customs Service carried out a successful pilot test at two selected bonded warehouses between October 1979 and April 1980; the test utilized a reporting system with post audit application, i.e. recordkeeping and other functions were carried out by warehouse proprietors without the presence of a CWO, but with follow-up audit by the Customs Service. This new control method was deemed to be both cost-efficient and mission-effective. Accordingly, the Customs Service initiated a study of alternative control methods to determine whether the present system should indeed be substantially modified. The outcome of the study was a decision by Customs management to pursue the complete modification of the present system into a system that uses post audit techniques rather than the physical presence of Customs warehouse officers. Accordingly, the Customs Service is currently proposing amendments to relevant sections of the Customs Regulations in order to implement the new system.

Objective and Legal Basis of the Proposed Rules

The objective of the proposed modification of the Customs bonded warehouse system is to improve the system's cost-effectiveness, thereby saving money for the U.S. consumer and taxpayer, as well as for owners and proprietors of Customs bonded warehouses.

The regulatory project is initiated under the authority of R.S. 251, as amended, secs. 311, 312, 555, 556, 623, 624, 46 Stat. 691, as amended, 692, as amended, 743, as amended, 759, as amended (19 U.S.C. 66, 1311, 1312, 1555, 1556, 1623, 1624).

The Number and Type of Small Entities Affected

A Customs bonded warehouse is a building or other secured area in which dutiable goods may be stored, manipulated, or undergo manufacturing operations without payment of duty. On July 1, 1980, there were 1,414 bonded warehouses in the United States; owing to the perceived slow turnover in the number of bonded warehouses the Customs Service assumes that the current number of such ware-

houses continues to be approximately 1,414. The warehouses are divided into eight "classes," according to the various kinds of storage, manipulation, manufacturing, and smelting that take place, the two principal classes of warehouses are (1) the 395 warehouses that are used exclusively for the storage of merchandise belonging or consigned to the proprietor thereof, and (2) the 307 public bonded warehouses used exclusively for the storage of imported merchandise.

In fiscal year 1980, $418.7 million in duties were collected from bonded warehouse withdrawals, representing 6 percent of total Customs duties collected. It is believed that most of the withdrawals take place in a relatively small number of warehouses.

The proposed amendments to the Customs Regulations affect all Customs bonded warehouses, regardless of size. It is believed that many, if not most, of the warehouses can be considered to be "small entities" under the Regulatory Flexibility Act.

Analysis of the Current Bonded Warehouse Control System, of the Proposed System, and of Alternative Systems Considered by the Customs Service

A number of alternatives are available to the Customs Service to assure the proper control of merchandise in Customs bonded warehouses. Major such alternatives are discussed below. The first alternative to be discussed is the *current* system, followed by a discussion of a possible step-by-step *modification* of the current system. The system which would be implemented by the *proposed amendments* is then discussed and analyzed, followed by a discussion of two other systems considered by the Customs Service. For each applicable alternative, efforts were made to analyze the economic effects on the following parties: proprietors of bonded warehouses; the U.S. Treasury (U.S. taxpayer); the importing community; and the general U.S. economy.

The Current System.—The Customs Service is required by law to supervise bonded warehouses. At present, Customs' supervision is generally carried out via Customs warehouse officers (CWOs) who are physically present at the warehouses. The CWOs supervise the entry or withdrawal of goods from the warehouse and oversee the manipulation, manufacture, or destruction of such goods. Warehouse proprietors are required by law to reimburse the Customs Service 137 percent of the salary and administrative costs of full-time CWOs and 108 percent of the salary and administrative costs of temporarily detailed officers.

In most warehouses, activity is sporadic and CWOs are called upon to perform their tasks on an as-needed basis. The Customs Service must not only provide CWOs and other officials to control the warehouses, but must allocate the time of various Customs personnel

(clerks, aides, etc.) to maintain, file, and process the entry documentation at the customhouse.

The present system has undergone some modification in recent years. In 1977, authority was given to Customs' District Directors to not require on-site supervision of withdrawls in certain instances where non-reimbursable Customs inspectors were utilized. In 1979, this authority was extended to instances where full-time CWOs were present. By the end of fiscal year 1980, seven percent of all Servicewide warehouse withdrawals used such a modified system, in which the prior collection of duties and the existence of two bonds are deemed to provide sufficient protection against loss of revenue.

The annual direct cost of the present Customs warehouse system is $10 million, which is divided as follows:

(1) a $6.1 million cost to warehouse proprietors to reimburse Customs for the 390 full-time officers, including CWOs.

(2) a $1.2 million cost to warehouse proprietors to reimburse Customs for part-time officers assigned;

(3) a $1.1 million cost to warehouse proprietors to reimburse Customs for "1911" and "F.E.P A." (provisions for the payment of overtime);

(4) a $1.6 million cost to the Customs Service to pay for 119 nonreimbursable Customs officers who are engaged in warehouse-related tasks.

It is believed by the Customs Service that the $10 million direct cost is far outweighed by the economic benefits to the U.S. economy of the bonded warehouse program. These benefits accrue to U.S. importers and possibly (via "pass-through" effects) to the U.S. consumer.

The economic effect of the current system on *warehouse proprietors* is believed to be somewhat adverse. Proprietors currently outlay approximately $8.4 million per year for the services provided by full-time CWOs and by other officers of the Customs Service, and indeed receive certain services. However, the Customs Service believes that the cost currently incurred by proprietors can be substantially diminished, and accordingly has proposed an alternative system.

The economic effect of the current system on the *U.S. Treasury*, i.e. the U.S. taxpayer, consists principally of the annual $1.6 million cost to the Customs Service of paying for nonreimbursable Customs officers engaged in warehouse-related tasks.

The economic effect of the current system on the importing community is generally positive. The importing community certainly benefits from the bonded warehouse program by the ability to defer or reduce duties; however, the importing community also has an indirect cost under the present system: the delays, lost sales, and

other costs incurred when Customs is unable to provide prompt and around-the-clock supervision of warehouse transactions. With regard to the general U.S. economy, the bonded warehouse program is of significant benefit to the importing community and to U.S. industry; however, the Customs Service believes that equivalent benefits could be realized at a lower cost to the economy if the current bonded warehouse program is comprehensively changed.

A "Modified" Current System.—The current bonded warehouse control system discussed above could be modified in a step-by-step manner which could ultimately lead to the resolution of many of the problems deemed inherent in the current system. The steps that could be taken would be:

(1) an already-proposed modification which would amend the regulations to make modified supervision mandatory on warehouse proprietors whenever Customs deems it necessary;

(2) modification of the supervision of entry of goods into warehouses;

(3) allowing proprietors to perform inventory recordkeeping in lieu of recordkeeping by Customs officers (most proprietors perform this task anyway, thus duplicating what Customs does in the current system);

(4) to modify supervision of transportation from one warehouse to another to do away with on-site supervision at the warehouse of origin;

(5) modification of supervision of withdrawals for vessel/aircraft supply; and

(6) modification of the supervision of withdrawals for exportation.

The above steps would build upon the present system, using call-in permits and physical inventories as an alternate means of supervision (until modification #5). Each step would require a bond change, and all would probably require the payment of liquidated damages of at least twice the duties and taxes on goods that are missing.

The costs involved in this "modified" approach are difficult to determine owing to the unknown scheduling period for the various steps (the modifications could take five years to be fully implemented). However, after the various modifications are all implemented, about 75 percent of the need and cost of Customs personnel at bonded warehouses will have been eliminated; this would be a significant savings for warehouse proprietors over the current system. Nevertheless, the Customs Service believes that proprietors, the importing community, the U.S. taxpayer, and the general economy would incur even *lower* costs and greater efficiency if the current system is modified

not in stages but in one fell swoop which would eliminate the need for CWOs and inspector details; the proposed amendments which would implement such an immediate and comprehensive change are discussed and analyzed below.

The Proposed Amendments' System for Controlling Merchandise in Bonded Warehouses.—The proposed amendments would implement a new system of controlling merchandise in bonded warehouses. This new system, hereinafter referred to as the Regulatory Audit/Inspection approach, would entail a complete revision in the type and scope of Customs' supervision of bonded warehouse operations. Among the proposed changes are:

(1) the elimination of the need for reimbursable warehouse officer positions;

(2) the transfer to bonded warehouse proprietors of certain responsibilities for the proper management of warehouse operations; these responsibilities would include certain recordkeeping requirements, including the preparation of an annual Proprietor's Submission statement to the Customs Service, and the acceptance and agreement of descriptions and quantities of merchandise leaving the warehouse;

(3) securing of additional bond coverage; and

(4) imposition of fees to establish or relocate a warehouse facility and an annual fee thereafter.

Under the Proposed Regulatory Audit/Inspection Approach, proprietors would be responsible for all recordkeeping functions currently being performed by CWOs. However, except for the annual Proprietor's Submission which will be required, recordkeeping requirements are not expected to impose additional burdens upon proprietors since proprietors currently keep substantive records of transactions, and would merely continue to do so.

The annual direct cost of the proposed Regulatory Audit/Inspection system is estimated to be $3 million, i.e. significantly less than the cost of the current system. The estimated cost of the proposed system is based upon the following components:

(1) a $1.0 million cost to warehouse proprietors to reimburse the Customs Service for the regulatory audit/inspection services which will be provided;

(2) a $1.8 million cost to warehouse proprietors for the preparation of the required annual Proprietor's Submission,[1] (there

[1] The Proprietor's Submission will be prepared by warehouse proprietors and submitted to the Customs Service after the end of each fiscal year. Each submission will reflect all bonded merchandise entering, released, and manipulated in the bonded warehouse, i.e. a complete reconciliation of beginning and ending inventory as well as all receipts/withdrawals and documentation of breakage by entry number. The Customs Service has est mated that preparation of the Proprietor's Submissions will require a total of 528,836 working hours by the bonded warehouse community.

may be additional costs of a complete inventory/reconciliation which will be taken when the proposed system is implemented and perhaps for the maintenance of entry (bond) jackets); and (3) increased costs of bonding coverage and certain fees for the establishment or relocation of warehouse facilities—these costs and fees are believed to be far less significant than the amounts specified in (1) and (2) above.

The economic effect of the proposed system on *warehouse proprietors* is believed by the Customs Service to be significantly preferable to the current system or a step-by-step modification of the current system. Under the proposed system, the total cost to proprietors will be under $3 million per year, compared to $8.4 million per year under the current system. The diminished cost of approximately $5.4 million per year, when averaged among the 1,414 bonded warehouses, results in savings of nearly $4,000 per warehouse. These savings can be realized without any significant enforcement or safety effects on the warehouses.

The economic effect of the proposed system on the *U.S. Treasury* (Customs Service), i.e., the U.S. taxpayer, is also beneficial: the Customs Service would save the $1.6 million in warehouse control costs which are being incurred to support 119 non-reimbursable warehouse positions, although there would be an annual $50,000 cost for the two man-years which will be involved in collecting, processing and analyzing information on the Proprietor's Submission.

The economic effect of the proposed system on the *importing community* and the general U.S. economy is also positive. The proposed system would result in lower cost and greater efficiency, thus realizing savings for the importing community and hopefully (via "pass-through" effects) for the U.S. consumer. There may also be some undetermined effects on surety companies.

The Roving Team Approach.—Another alternative system considered by the Customs Service for the control of merchandise in bonded warehouses is the "roving team" system. Under this system, the positions and functions of CWOs would be eliminated, to be replaced by the establishment of roving teams which would make unannounced monthly inspections and carry out inventories of bonded warehouse merchandise. The "services" provided by the roving teams would be reimbursable to the Customs Service.

The roving team approach will not result in significant savings for warehouse proprietors on the importing community, since the costs of the roving teams would be borne by the proprietors. Moreover, the $1.6 million cost to the Customs Service for nonreimbursable positions would remain. Accordingly, the roving team approach is not believed to be a viable, cost-effective approach by the Customs Service.

Contracting Out to a Third Party.—An opinion by the Customs Service's Office of the Chief Counsel indicates that this alternative (i.e., to contract with an independent third party to provide physical security thus replacing CWOs) may be illegal. Accordingly, the Customs Service has not estimated the costs and benefits of this alternative.

Conclusion

The proposed Regulatory Audit/Inspection Approach is believed to be the most cost-efficient and mission-effective of the alternatives which have been examined. For this reason, the Customs Service has prepared proposed amendments which would implement this new approach. Public comments and suggestions are welcome in order to best formulate the new approach; especially welcome are suggestions from operators, owners, and proprietors of small bonded warehouses, in order that (if necessary) the proposed amendments can be modified or "tiered" to best fit the circumstances surrounding smaller bonded warehouses.

APPENDIX B

No._____

PROPRIETOR'S WAREHOUSE BOND

For Storage and Manipulation of Merchandise, Classes 2, 3, 4, 5, and 8

Know all men by these presents that*_____
_____,
of _____, as principal, and**_____, of _____, and_____, of _____, as sureties, are held and firmly bound into the United States of America in the sum of _____ dollars ($_____), for the payment of which we bind ourselves, our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this ____day of _____, 19__.

Whereas, under the warehouse laws of the United States and the regulations of the U.S. Customs Service made in pursuance thereof, the above-bounden principal has made application to bond the warehouse, or premises located in Customs District_____, at the place and for the purposes specified below, namely:

_____

Location (Number, street, city and State)

* If the principal or surety is a corporation, the name of the State in which incorporated also shall be shown.

** May be executed by the secretary, assistant secretary, or other officer of the corporation.

Class (specify whether class 2, 3, 4, 5, or 8)

Purpose

Now, therefore, the condition of this obligation is such that—

1. *Agreement to secure against loss.* If the principal is authorized to operate a bonded warehouse under 19 U.S.C. 1555, obligors agree to reimburse the United States for any loss or expense connected with or arising from the deposit, storage, manipulation, or removal of merchandise in the facility, including an expense caused by discontinuance or suspension of the bonded status of the facility.

2. *Agreement with respect to the deposit of merchandise.* If authorized to operate a bonded warehouse under 19 U.S.C. 1555, principal acknowledges that Customs may conduct unannounced inventory checks of the facility and agrees to:

(a) Receive only merchandise covered by an appropriate Customs permit;

(b) Mark each package with the correct general order number, warehouse entry number, or seizure number and the corresponding date of the order, entry, or seizure delivery ticket;

(c) Store separately any package that has an exception for loss or damage or that has a discrepancy between its contents, its marks and numbers or the marks and numbers on the permit; and

(d) Store together in one place within the facility all merchandise in a general order shipment, in a warehouse entry, or in a seizure unless Customs permits commingled storage, or the merchandise is covered by paragraph (c).

If principal defaults, obligors agree to pay liquidated damages of $100 for each default.

APPENDIX B

3. *Agreement to keep records.* If authorized to operate a warehouse under 19 U.S.C. 1555, principal agrees to:

(a) Record the shipping marks and numbers of all packages, (or the weigher's or gauger's numbers of weighable or gaugeable packages that lack shipping marks and numbers) in accordance with Customs Regulations and file a copy of the record pertaining to a specific warehouse entry, general order shipment, or a seizure in a separate entry folder;

(b) File in that same folder, and record in accordance with Customs Regulations, within 2 business days after the event occurs, all receipts, damages/shortage reports, manipulation

requests, specific removals, and blanket removals and the partial release permit copy for each removal made under the blanket authority, referred to in 19 CFR 19.6;

(c) Maintain that folder in the facility and allow inspection of it by Customs.

If principal defaults, obligors agree to pay liquidated damages of $100 for each item that is incorrectly recorded or filed, or not recorded or filed, or each instance of a refusal to allow Customs inspection of a folder covering a warehouse entry, general order shipment, or seizure.

4. *Agreement to secure facility.* If principal is authorized to operate a bonded warehouse under 19 U.S.C. 1555, principal agrees to:

(a) Secure the facility by meeting each of the general standards and recommended specifications that are listed in T.D. 72–56; so long as they do not conflict with the provisions of paragraph (b);

(b) Meet every applicable Federal, state, and local requirement (such as fire codes) for the safe and sanitary storage of merchandise in the facility and remove all trash and waste from the bonded area;

(c) Place merchandise in the facility so that no door, entrance, or exit is blocked;

(d) Establish and maintain aisles in the facility so that Customs has ready access to all merchandise at all reasonable hours;

(e) Hold the facility open for Customs inspection at all reasonable hours; and

(f) Secure inlets and outlets of bonded tanks with locks or Customs approved in-bond seals.

If principal defaults, obligors agree to pay liquidated damages of $100 for each failure to comply.

5. *Agreement to notify and file documents with Customs.* If principal is authorized to operate a bonded warehouse under 19 U.S.C. 1555. principal agrees to:

(a) Before any removal, insure that Customs has given either specific or blanket permission for the removal;

(b) Within 2 business days after a final removal of merchandise covered by a warehouse entry, general order shipment, or seizure, file with Customs the complete folder on that merchandise, together with a complete accounting of all merchandise in the entry, shipment, or seizure;

(c) Before any manipulation, notify Customs of the intended manipulation and obtain Customs specific or blanket approval;

(d) Within 45 days from the end of the principal's business

year (fiscal or calender), file the Warehouse Proprietor's Submission in the form prescribed by T.D.——which includes a complete accounting of the beginning and ending inventories of merchandise in each facility during the year and of all receipts, manipulations, and removals during the year;

(e) Notify Customs if any merchandise in an entry or in a general order shipment is not withdrawn during the applicable 5-year warehousing period or the applicable 1-year general order period, on expiration of that period, and file with Customs the folder on that entry or shipment when requested by Customs;

(f) Notify Customs in writing by close of business of the next business day on discovery of any extraordinary (one percent or more of the value of merchandise in an entry) overage, or shortage of, or damage to any merchandise in the facility; and

(g) Notify Customs in writing by close of business of the next business day on discovery of any discrepancy (i.e. overage, shortage, damage, etc.) in merchandise in a general order shipment or seizure.

If principal defaults, obligors agree to pay liquidated damages of $100 for each failure to comply. In addition, if any merchandise is removed without Customs approval, obligors agree to pay liquidated damages equal to five times the duty and tax due, as calculated by Customs, on any dutiable or taxable merchandise and liquidated damages equal to the value of any nondutiable merchandise.

6. *Agreement on sealing conveyances.* If principal is authorized to operate a bonded warehouse under 19 U.S.C. 1555, principal agrees to:

(1) Affix and break Customs seals in accordance with the Customs Regulations or an order or directive from Customs;

(2) Report to Customs any seal that is found to be broken, missing, or improperly affixed; and

(3) Hold the vehicle, container, and contents intact for Customs.

If principal defaults, obligors agree to pay liquidated damages of $100 for each failure to comply with any of the above requirements.

Then this obligation to be void; otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

_____	_____
(Name)	(Address)

_____	_____	_____	(Seal)
(Name)	(Address)	(Principal)	

_____ (Name)	_____ (Address)	
_____ (Name)	_____ (Address)	_____ (Seal) (Surety)
_____ (Name)	_____ (Address)	
_____ (Name)	_____ (Address)	_____ (Seal) (Surety)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ secretary of the corporation named as principal in the within bond; that _____, who signed the said bond on behalf of the principal, was the _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for in behalf of said corporation by authority of its governing body. _____ (corporate seal)

Note.—To be used when no power of attorney has been filed with the district director of Customs.

APPENDIX C

No._____

PROPRIETOR'S MANUFACTURING WAREHOUSE BOND, CLASS 6

Know all men by these presents that*_____ _____, of_____, as principal, and**_____, of _____, and_____, of _____, as sureties, are held and firmly bound into the United States of America in the sum of _____ dollars ($_____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this ____ day of _____, 19 __.

Whereas, under the warehouse laws of the United States and the regulations of the U.S. Customs Service made in pursuance thereof, the above-bounden principal has made application to bond the warehouse, or premises located in Customs District No. _____, at the place and for the purpose of manufacturing certain articles specified below, namely:

* If the principal or surety is a corporation, the name of the State in which incorporated also shall be shown.

** May be executed by the secretary, assistant secretary, or other officer of the corporation.

Location (Number street, City, and State)

For the Manufacture of (Specify articles in detail)

1. *Agreement to comply with statute and regulations.*

If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to:

(a) Use the warehouse exclusively for the purpose for which it is bonded;

(b) Properly enter and pay duty an any imported implement, machinery, or apparatus that is for the construction of the warehouse or for the prosecution of its business;

(c) Insure that all operations conform strictly to any manufacturing formula filed with Customs;

(d) Maintain within the warehouse a separate storage area, secured in accordance with the standards and specifications in T.D. 72–56, for storage of all imported merchandise, domestic spirits, and other merchandise subject to an Internal Revenue tax transferred to the warehouse for manufacturing; and

(e) Maintain within the warehouse a separate area, secured in accordance with the standards and specifications in T.D. 72–56, for the storage of products manufactured in the warehouse.

If principal defaults, obligors agree to pay liquidated damages of $1,000 for each default.

2. *Agreement to secure against loss.* If principal is authorized to operate a bonded manufacturing warehouse, obligors agree to reimburse the United States for any loss or expense connected with the deposit, storage, manufacturing or removal of merchandise in the warehouse, including duty and tax due and an expense due to discontinuance or suspension of the bonded status of the facility.

3. *Agreement with respect to deposit of merchandise.* If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to;

(a) Receive only merchandise covered by an appropriate Customs permit;

(b) Store merchandise received in the manner required by statute or regulation;

(c) Transfer merchandise from a storage area in the warehouse to a manufacturing area in the warehouse in the manner required by regulation;

(d) Mark each package with the correct warehouse entry number and date until manufacturing takes place; and after manufacture, mark each package of the finished product with the correct warehouse entry and date.

If principal defaults, obligors agree to pay liquidated damages which equal $100 and the amount of duty on any merchandise involved in the default.

4. *Agreement to keep records.* If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to:

(a) Record all deposits of merchandise, for manufacturing or prosecution of warehouse business in accordance with Customs Regulations;

(b) Record all transfers from any storage area to a manufacturing area in the facility in accordance with Customs Regulations;

(c) Record all transfers from any manufacturing area to finished product storage area within the facility in accordance with Customs Regulations;

(d) Record all manufacturing operations performed within the warehouse with sufficient detail to enable a Customs officer to determine whether there has been compliance with any manufacturing formula filed with Customs and to enable a Customs officer to audit use and disposition of the merchandise;

(e) Record all withdrawals and removals from the facility in accordance with Customs Regulations;

(f) File in a separate folder pertaining to each entry into the facility each document (receipt, permit, transfer permit, manufacturing abstract, and removal permit) on that entry within 2 business days after the event covered by the document occurs;

(g) Maintain each entry folder in the facility and allow inspection of it by Customs at all reasonable hours; and

(h) Take an annual physical inventory as well as file a warehouse proprietors submission.

If principal defaults, obligors agree to pay liquidated damages of $100 for each item that is incorrectly recorded, incorrectly filed, or not recorded or filed, or for each failure to inventory, or each instance of a refusal to allow Customs inspection of a folder covering a warehouse entry.

5. *Agreement on removals.* If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to:

(a) Not remove or suffer the removal of any merchandise except under a Customs permit;

(b) Within 2 business days after final removal of any mer-

chandise in a warehouse entry, file the complete folder on that entry with Customs;

(c) At the end of each month, file a detailed statement of all imported merchandise and merchandise on which Internal Revenue tax has not been paid used by the proprietor in the manufacture of articles;

(d) If any imported merchandise in an entry is not withdrawn within 5 years from the date of importation notify Customs of that fact on expiration of that period and simultaneously file with Customs the folder on that entry;

(e) Notify Customs in writing by close of business of the next business day on discovery of any extraordinary (one percent or more of the value of merchandise in an entry) overage or shortage of or damage to any merchandise in the facility; and

(f) Properly mark each package of cigars that is to be withdrawn for consumption.

If principal defaults obligors agree to pay liquidated damages of $100 for each failure to comply. In addition, if any merchandise is removed without Customs approval, or if it consists of improperly marked packages of cigars, obligors agree to pay liquidated damages equal to five times the duty and tax due on any dutiable and/or taxable merchandise involved in the default and liquidated damages equal to the value of any nondutiable merchandise involved in the default.

6. *Agreement to furnish proof of exportation.* If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to furnish any consular invoices, declarations of owners or consignees, certificates of origin, certificates of exportation or other document that may be demanded by Customs to show compliance with the law and regulations within 6 months from the date of demand.

If principal defaults, obligors agree to pay liquidated damages equal to the duty or tax on any merchandise involved in the default.

Then this obligation to be void; otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

_____ (Name)	_____ (Address)		
_____ (Name)	_____ (Address)	_____ (Principal)	_____ (Seal)
_____ (Name)	_____ (Address)		
_____ (Name)	_____ (Address)	_____ (Surety)	_____ (Seal)

(Name)	(Address)		
(Name)	(Address)	(Surety)	(Seal)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ secretary of the corporation named as principal in the within bond; that _____, who signed the said bond on behalf of the principal, was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for in behalf of said corporation by authority of its governing body.

_____ (corporate seal)

Note.—To be used when no power of attorney has been filed with the district director of Customs.

Now therefore, the condition of this obligation is such that—

APPENDIX D

No._____

GENERAL BOND FOR SMELTING AND REFINING WAREHOUSES

Know all men by these presents, that *_____ _____, of _____, as principal, and _____, of _____ _____, and ** _____, of _____, as sureties, are held and firmly bound unto the United States of America in the sum of _____ dollars ($_____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this ____ day of _____, 19__.

Whereas, the said _____ have (has) been authorized to smelt or refine, or both, imported metal-bearing materials in bond without the payment of duty there on, as provided in section 312, Tariff Act of 1930, as amended, in the premises situated at _____ and more psrticularly described by metes and bounds in exhibits _____ _____, attached hereto and made a part hereof, which premises are owned, controlled, and operated by _____; and

Whereas, metal bearing materials will be entered for warehouse to be smelted or refined, or both; and

Whereas, metal-bearing materials (as well as merchandise generally) will be entered for consumption or for warehouse, and in warehouses of classes 2, 3, or 4 at any of the following ports of entry _____ _____: and

*If the principal or surety is a corporation, the name of the State in which incorporated also shall be shown.

**May be executed by the secretary, assistant secretary, or other officer of the corporation.

Whereas, certain merchandise, in whole or in part, may be entered under the provisions of section 484, Tariff Act of 1930, as amended, and duties deposited under the provisions of section 505(a), Tariff Act of 1930, as amended; and

Whereas, Pursuant to the regulations promulgated under section 448(b), Tariff Act of 1930, the said principal may find that immediate delivery of the merchandise will be necessary and desires the release of such merchandise prior to the making of formal entry therefor and payment of duties thereon; and

Whereas, imported merchandise generally, and dutiable metal-bearing materials (including products partly smelted or refined) will, to the extent permitted by law and regulations and in accordance therewith, be transferred from one warehouse to another, or be withdrawn for consumption, for transportation and rewarehousing, for exportation, for transportation and exportation, or for any other purpose provided for by law and regulations, as shown in the required documents.

Whereas, the above-bounden principal may request that the merchandise be examined elsewhere than at the public store, wharf, or other place in charge of a Customs officer;

Now, therefore, the condition of this obligation is such, that—

1. *Agreement to pay costs and expenses.* If principal is allowed to operate a bonded smelting and refining warehouse and enters any metal-bearing material without payment of duty, obligors agree to pay any costs or expense associated with Customs supervision of the warehouse and indemnify Customs for any loss associated with the entry, deposit, storage, smelting, refining, withdrawal, transfer, or removal of any metal-bearing material or any product of a metal-bearing material in or from the warehouse.

2. *Agreement on recordkeeping.* If principal operates a bonded smelting and refining warehouse, principal agrees to:

(a) Maintain complete smelting and refining records in accordance with Customs Regulations showing the receipt and disposition of each shipment of materials (hereinafter includes metal-bearing materials, products of metal-bearing materials, and dutiable metal) received (actual and theoretical), into the warehouse;

(b) File with Customs, at end of the principal's business year, a complete statement of the annual smelting and refining operations done which shows:

(i) The quantity of metal-bearing materials in the warehouse and their dutiable metal content at the beginning of the year;

(ii) The quantity of metal-bearing materials received during the year and their dutiable metal content;

(iii) The quantity of metal-bearing materials in the warehouse at the end of the year and their dutiable metal content;

(iv) The quantity of metal-bearing materials worked during the year which shall include the quantity of foreign material and the quantity of domestic material put in process;

(v) The quantity and kind of metal and intermediate products produced;

(vi) Disposition of all materials transferred, withdrawn, or removed (actually or theoretically) from the warehouse during the year;

(c) Maintain the report of sampling, weighing, and assaying on each shipment of metal-bearing materials received into the warehouse for five years from the date of liquidation;

(d) Maintain for five years from date of liquidation any report of sampling, weighing, and assaying on any smelting and unrefined product or bullion obtained from the smelting of imported material that is to be transferred to another warehouse;

(e) Maintain all Customs permits (blanket or specific) to enter, transfer, withdraw, or remove (actual or theoretical) any materials into or from the warehouse;

(f) Complete and file with Customs within 30 days after exportation of metal under the memorandum withdrawal procedure set forth in 19 U.S.C. 1312(b)(1) and the Customs Regulations all records on the exportation; and

(g) File with Customs a complete inventory of all metals in the warehouse as required by the Customs Regulations.

If principal defaults, obligors agree to pay liquidated damages of $100 for each default.

3. *Agreement on entry and withdrawals.* If principal operates a bonded smelting and refining warehouse, principal agrees to:

(a) Receive actual or theoretical deposit of any metal-bearing material, a product of a metal-bearing material, or any metal, which may be subject to duty, only after receipt of a Customs permit;

(b) Keep separate any metal-bearing material which may be subject to duty from all other materials until that material has been sampled, weighed, and assayed; and

(c) Obtain Customs permit to transfer, withdraw, or remove (physically or theoretically) any material before transfer, withdrawal, or removal is begun.

If principal defaults, obligors agree to pay liquidated damages equal to the amount of duty on all materials involved in the default.

4. *Agreement to pay duty.* If principal operates a bonded smelting and refining warehouse, obligors agree to pay on demand all duty determined to be due on liquidation or by regulation with respect to any material withdrawn for consumption and any dutiable metal found to be missing from the warehouse without a proper withdrawal or removal.

5. *Agreement to secure facility.* If principal operates a bonded smelting and refining warehouse, principal agrees to:

(a) Secure the warehouse by meeting each of the general standards and recommended specifications that are listed in T.D. 72–56; so long as they do not conflict with those provisions of 4(b);

(b) Meet every applicable Federal, State, and local requirement (such as fire codes) for the safe, sanitary, and secure storage of materials in the warehouse;

(c) Place materials in the warehouse so that no door, entrance, or exit is blocked;

(d) Establish and maintain the warehouse so that Customs has ready access to all materials at all reasonable hours; and

(e) Hold the warehouse and all records open for Customs inspection at all reasonable hours.

If principal defaults, obligors agree to pay liquidated damages of $100 for each failure to comply.

Then this obligation to be void; otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

_____ (Name)	_____ (Address)		
_____ (Name)	_____ (Address)	_____ (Principal)	(Seal)
_____ (Name)	_____ (Address)		
_____ (Name)	_____ (Address)	_____ (Surety)	(Seal)
_____ (Name)	_____ (Address)		
_____ (Name)	_____ (Address)	_____ (Surety)	(Seal)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ secretary of the corporation named as principal in the within bond; that _____, who signed the said bond on behalf of the principal, was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for in behalf of said corporation by authority of its governing bod

_____ (corporate seal)

Note.—To be used when no power of attorney has been filed with the district director of Customs.

U.S. CUSTOMS SERVICE BONDED WAREHOUSE PROPRIETOR SUBMISSION INSTRUCTIONS

The preparation and filing of this submission, with the Regional Director, Regulatory Audit Division, U.S. Customs Service, is to occur within 45 days subsequent to the company's year end. Should you have questions regarding this submission, contact the Regional Director, Regulatory Audit Division, at_____.

A warehouse proprietor is required to file a submission for each warehouse facility. The definition of a warehouse facility is as follows:

> A warehouse facility will be determined by street address, location, or both. For example, if a proprietor has two warehouses located at one street address and three warehouses located at three different street addresses, the two would be considered as one warehouse facility and the three warehouses would each be considered as separate facilities.

The following instructions are to assist you in preparing the "Bonded Warehouse Proprietors Submission."

On the front page of each warehouse submission record the information requested as shown below.

Name of warehouse facility
Address
Telephone number
IRS number
Contact person

The Warehouse Proprietor Submission form follows on page 3. The form is divided into eight sections labeled A through H.

In:

Column (A). Record the number and date of all entries which were included in:

1. The beginning inventory of the year just ended.

2. The ending inventory, based on the physical inventory just taken.

3. Also, include all entries which were opened and closed during the year which do not appear in either the beginning or ending inventory listings.

Column (B). Provide an adequate description of all merchandise covered by those entries listed in column (A). The description should be concise but specific enough to identify the commodity, i.e., "scotch" rather than "liquor". For entries listing multiple commodities, the term "various may be used, however this will not be acceptable for all situations.

Column (C). Record in Column (C) the quantity stated on the entry for each commodity described in column (B).

Column (D). Record any quantity actually received that is over/short that recorded in column (C).

Column (E) & (F). Record the quantities relating to all breakage occurring upon arrival and/or in the warehouse pertaining to each commodity listed in Column (B).

Column (G). Record the quantity of merchandise that is on hand at the end of the business year.

Column (H). Record the date on which the entry was closed and forwarded to Customs.

An authorized representative of the company must sign the document where indicated prior to issuing it to Customs.

WAREHOUSE PROPRIETOR SUBMISSION

Entry Number/Date	Description of Merchandise	Quantity		Breakage		Ending Inventory Quantity	Date Entry Closed & Forwarded to Customs
		Per Entry	Over/Short on Receipt	Upon Receipt Quantity	In Warehouse Quantity		
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)

Certification: I hereby certify that the information contained in this submission completely and accurately represents all entry transactions as well as beginning and ending inventories of (*Name*) warehouse facility for the year ending ___.

(Signed

(Title)

(Company)

(Date)

367-077 O - 82 - 4

U.S. Customs Service

General Notice

Proposed Change of Practice in Classifying Garments With Simulated Features; Extension of Time for Comments

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of extension of time for comments.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments with respect to a notice of a proposed change of practice in Customs classification of garments with simulated features. A document inviting the public to comment on this notice of proposed change of practice was published in the Federal Register on January 14, 1982 (47 FR 2126). Comments were to have been received on or before March 15, 1982. Requests have been received to extend the period of time for the submission of comments claiming that additional time is needed to prepare a comprehensive statement of the pertinent facts and law in response to the invitation for comments. Customs believes additional time for comment is warranted. Accordingly, this notice extends the period of time for comment to April 14, 1982.

DATES: Comments must be received on or before April 14, 1982.

ADDRESS: Writtten comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Philip Robins, Classification and Value Division U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8181).

Dated: March 1, 1982.

JOHN P. SIMPSON,
Director, Office of Regulations and Rulings.

[Published in the Federal Register Mar. 9, 1982 (47 FR 10058]

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Customs Service Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the U.S. Customs Service. Individuals to whom any of these decisions would be of interest should read the limitations expressed in 19 CFR 177.9(c).

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, Attention: Legal Retrieval and Dissemination Branch, Room 2404, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. These copies will be made available at a cost to the requester of $0.10 per page. However, the Customs Service will waive this charge if the total number of pages copied is ten or less.

Decisions listed in earlier issues of the CUSTOMS BULLETIN, through October 15, 1981, are available in microfiche format at a cost of $39.60 ($0.15 per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Retrieval and Dissemination Branch. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: February 25, 1982.

B. JAMES FRITZ,
Director, Regulations Control and Disclosure Law Division.

Date of decision	File No.	Issue
12-18-81	064685	Classification: Woman's cotton woven headband with adjustable elasticized back portion (382.00)
01-29-82	065768	Classification: Childrens' denim jeans (382.00, 382.33)
01-20-82	065968	Classification: Sports band used to hold eyeglasses to the user's head (386.10-389.70, 774.20-774.55)
01-20-82	068518	Classification: Aircraft galley units imported with some or all of its components do not constitute an entirety (727.56)
01-20-82	068559	Classification: Load binder (657.25)
01-20-82	068715	Classification: Musical decanter (653.90, 654.00, 654.20)
01-22-82	068754	Classification: Hibachis (653.49)
01-20-82	068775	Classification: Aircraft systems and procedures trainer (SPT) or pre-flight trainer (678.48, 678.50)
01-20-82	068856	Classification: Rayon bag (386.09, 706.24)
01-22-82	069016/ 069017	Classification: Cigarette wrapping and packaging machinery (662.10)
01-22-82	069097	Classification: Milk chocolate crumb (118.30, 182.92, 156.30, 950.11, 950.15, 950.22, 950.23)
01-15-82	069132	Classification: Pneumatic propulsion control valves (680.17, 680.27)
01-27-82	069194	Classification: Lasted footwear uppers (700.35, 791.90)
01-20-82	069228	Classification: Folding step stool (727.55)
01-20-82	069230	Classification: Self-fluxing brazing alloys (605.48, 612.44, 612.45, 612.64, 656.15)
01-20-82	069270	Classification: Folding wheelchair (692.60, 727.04, 727.55, 732.60)
01-22-82	069317	Classification: Leather shoe uppers (700.45, 791.27, 791.28, 791.90)
01-20-82	069353	Classification: Sludge de-watering machines or filtering and purifying machinery (678.50, 661.95)
01-22-82	069354	Classification: Men's motorcycle jacket (379.31, 735.20)
01-29-82	069397	Classification: Shoes 50 percent by weight of fibers, rubber or plastics (700.59, 700.60)
12-30-81	069468	Classification: Tote bags classifiable as handbags of textile materials (389.60, 706.24)
01-15-82	069502	Classification: Multi-purpose steel storage buildings designed as silos or grain bins (870.40)
01-25-82	105385	Vessels: Warranty work and modifications performed on a vessel in a foreign port are dutiable repairs under 19 U.S.C. 1466
02-04-82	105417	Vessels: Entry requirements for vessels which arrive at U.S. Great Lakes ports from other U.S. ports
02-09-82	105440	Vessels: If in compliance with sections 4.1(c) (1) and (2) and 4.1(e), Customs Regulations, the use by a U.S. based company of a workboat to clean outside hulls of vessels arriving in the United States does not violate any Customs laws
01-26-82	105465	Vessels: Specifications to be met to qualify a tug as a special purpose vessel within the meaning of 19 U.S.C. 1466(e)
02-10-82	105468	Vessels: A vessel designed to carry liquid cargo to the military is not a special purpose vessel under 19 U.S.C. 1466(e), thus equipment purchases abroad are dutiable, additions to hull and fittings are not dutiable

02–10–82	105471	Air Carriers: Accountability of consolidated shipments arriving on two aircraft and covered by one air waybill
02–10–82	105468	Vessels: Refrigeration units not attached to or carried with cargo containers, may be considered exempt from coastwise trade restrictions imposed under 46 U.S.C. 883
01–12–82	542642	Transaction, Deductive and Computed Value: Dutiability of erection supervision, installation and U.S. procurement charges
09–14–81	800698	Classification: Melhydran (428.47, 432.25, 493.66)
09–08–81	800761	Classification: Dutrex 727, Dutrex 776 (407.16)
09–03–81	801110	Classification: Three layer carbon steel "altrix" sheets (657.25)
09–16–81	801151	Classification: Paper decorations (256.90, 737.22)
09–08–81	801248	Classification: Casual fabric shoes for men (700.59, 700.61, 700.67)
09–14–81	801259	Classification: Crabmeat substitute (113.08, 113.11, 113.15)
09–21–81	801268	Classification: Easter grass of manmade fibers (389.62)
09–28–81	801291	Classification: Wooden jogging Santa Claus (737.22)
09–14–81	801299	Classification: Christmas ornaments composed of cotton (386.04)
09–23–81	801300	Classification: Textile and plastic decorative cushions (386.50, 389.62, 772.15)
09–21–81	801314	Classification: Steel tool joints (606.73)
09–21–81	801332	Classification: Multi-layer wound type core manufactured from coils of steel sheet (682.60)
09–21–81	801334	Classification: Die cast metal toy figures (737.35)
09–23–81	801350	Classification: Toy plastic shapes designed to fit together (737.55, 737.95)
09–25–81	801370	Classification: Baking powder (183.05)
09–30–81	801396	Classification: Printer for decoder (676.30)
09–28–81	801401	Classification: Injection molding machine and molds for shoes (678.10, 680.11)
09–30–81	801418	Classification: Bullet proof vests (389.62)
09–30–81	801677	Classification: Two wheeled sprinkler for agricultural or horticultural pursuits (662.50, 870.40)
12–21–81	801834	Classification: Uppers for men's moccasin style loafer (791.28)
12–21–81	801887	Classification: Child's vinyl jogger (700.61)

Decisions of the United States Court of Customs and Patent Appeals

(Appeal No. 81–29)

NIPPON KOGAKU (USA), INC. *v.* UNITED STATES

SLIT-LAMP MICROSCOPE

1. CLASSIFICATION—SLIT-LAMP MICROSCOPES

The judgment of the Court of International Trade sustaining classification of Slit-Lamp Microscopes under item 709.05 (TSUS) is affirmed.

2. STATUTORY PRESUMPTION OF CORRECTNESS

The decision of the classifying official is supported by a statutory presumption of correctness. Protester bears the burden of establishing that the classification is erroneous and that the claimed classification is correct.

3. LEGISLATIVE INTENT—MEANING OF TARIFF TERMS

Tariff acts, like other statutes, are to be construed to carry out the intent of the legislature. In determining that intent, tariff terms are to be construed in accordance with their common and commerical meanings, which are presumed to be the same.

4. ID.—SOURCES OF INFORMATION

In determining the common meaning of a term, courts may and do consult dictionaries, scientific authorities, and other reliable sources of information including testimony of record.

5. ID.—ADMISSIBILITY OF EXTRANEOUS AIDS

While extraneous aids, such as legislative history, "are only admissible to solve doubt and not to create it," such aids are admissible where "plain meaning" of broad exclusionary headnote clashes with subordinate classification that corresponds with commercially recognized description.

6. HEADNOTE EXCLUSION

Headnote excluding "microscopes" was not intended to exclude diagnostic instruments such as the Slit-Lamp Microscope.

F. 2d

NIPPON KOGAKU (USA), INC., APPELLANT *v.* UNITED STATES, APPELLEE

No. 81–29

United States Court of Customs and Patent Appeals, February 25, 1982, Appeal from United States Court of International Trade. [Affirmed]

Joel K. Simon and *Margaret H. Sachter*, of New York, NY, attorneys for appellant.

Steven P. Florsheim and *Robert B. Sherman*, of New York, NY, attorneys for amicus curiae.

J. Paul McGrath, Assistant Attorney General, *David M. Cohen*, Director, *Joseph I. Liebman*, Attorney-in-Charge, and *Jerry P. Wiskin*, of New York, NY, attorneys for appellee.

[Oral argument on February 3, 1982 by *Joel K. Simon* for appellant and *Jerry P. Wiskin* for appellee.]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, MILLER, and NIES, *Associate Judges*.

MARKEY, *Chief Judge*.

[1] Nippon Kogaku (Kogaku) appeals from the judgment of the States Court of International Trade sustaining the classification of Slit-Lamp Microscopes under item 709.05, Tariff Schedules of the United States (TSUS) and refusing classification under item 708.73 (TSUS). We affirm.

BACKGROUND

The subject merchandise was imported from Japan by Kogaku and entered at New York in July 1972 and January 1975. Upon liquidation the merchandise was classified under item 709.05, providing:

Schedule 7, Part 2, Subpart B		
Optical instruments and appliances, and parts thereof:		
Mirrors and reflectors		
Binocular loupes for eye examinations		
Other		25% *ad val.*
709.05		

Kogaku contested the liquidated classification, claiming that the imported merchandise is properly classifiable under item 708.73, providing:

Schedule 7, Part 2, Subpart A	
Compound optical microscopes; electron, proton, and similar microscopes and diffraction apparatus; all the foregoing whether or not provided with means for photographing or projecting the image; frames	

and mountings for the foregoing articles, and parts of such frames and mountings:
Compound optical microscopes:
Not provided with means for photographing or projecting the image:

* * * * * * *

708.73 Valued over $50 each.. 22.5% *ad val.*

A Slit-Lamp Microscope is a device used by ophthalmologists and optometrists to assist in the examination and the diagnosis of abnormalities or diseases of the eye, to study drug effects and to fit contact lenses. The principal components of the Slit-Lamp Microscope are (1) the "main unit," (2) a cross-slide table which contains the power supply and to which the main unit is attached by a swivel arm and (3) a chin rest assembly permitting the patient's head to be placed in the proper position for an eye examination. The "main unit" consists of two interconnected systems: (a) an observation system employing twin objective lenses which provide a magnified image of the object viewed and twin eyepieces which further magnify the image, and (b) a slit-lamp system which directs a beam of light into the eye thereby sectioning the eye and permitting a view of various portions thereof, such as the cornea, vitreous humor and aqueous humor.

Appellant Kogaku and *amicus* Topcon Instrument Corporation [1] (an importer and distributor of similar slit-lamp microscopes) argue that in construction and operation, the imported articles are compound optical microscopes, properly classifiable under item 708.73, and specifically excluded from classification as ophthalmic instruments under item 709.05, by virtue of headnote 1(ii) of Schedule 7, part 2, subpart B, providing:

Subpart B headnote:
1. This subpart does not cover—

* * * * * * *

(ii) spectacles, lorgnettes, goggles and similar articles; *microscopes* and diffraction apparatus (*see subpart A of this part*); [Emphasis supplied.]

The Court of International Trade, per Boe, *J.*, held the imported Slit-Lamp Microscopes properly classified as medical (ophthalmic) optical instruments under item 709.05 SUS, finding that competent evidence had been submitted that, in commercial and trade usage, the term "compound optical microscope" did not include the subject merchandise. The court further found that without contradiction, industry, as well as ophthalmologists and optometrists, principal users

[1] Arguments of Kogaku and *amicus* coincide with respect to the issues here addressed. Reference to arguments of Kogaku will therefore encompass the similar arguments of *amicus*.

of the merchandise, refer to it as a slit-lamp microscope or a slit-lamp, not as a compound microscope.

Relying upon legislative history, the Court of International Trade determined that there was Congressional intent to limit the scope of the term "compound optical microscope," as used in the tariff schedule, to "general-purpose microscopes and those designed for industrial use or research laboratories and to exclude from the term 'compound optical microscope,' those specialized instruments used by medical practitioners to examine parts of the body for the purpose of diagnosing diseases or abnormalities."

OPINION

Kogaku argues that the plain language of the Subpart B headnote 1(ii) mandates that all devices falling within the general definition of a microscope, including those having an ophthalmic use, be omitted from classification under Subpart B. Relying on the structure and function of the Slit-Lamp Microscope observation system, Kogaku contends that the articles are compound microscopes and should be classified as such under item 708.73.

Kogaku asserts that the Court of International Trade disregarded the plain language of headnote 1(ii), creating an ambiguity within the statute where none existed. The court's resolution of that ambiguity by reference to legislative history and commercial usage allegedly rendered meaningless headnote 1(ii).

[2] Initially, we note that the decision of the classifying official is supported by a statutory presumption of correctness. 28 U.S.C. 2639 (1980). Kogaku bears the burden of establishing that the classification is erroneous and that the claimed classification is correct. *See e.g., United States* v. *A. Johnson & Co.*, 588 F. 2d 297 (CCPA 1978).

[3] Tariff acts, like other statutes, are to be construed to carry out the intent of the legislature. *Sandoz Chemical Works, Inc.* v. *United States*, 43 CCPA 152, C.A.D. 623 (1956). In determining that intent, tariff terms are to be construed in accordance with their common and commercial meanings, which are presumed to be the same. *United States* v. *Victoria Gin Co., Inc .*, 48 CCPA 33, C.A.D. 759 (1960); *Floral Arts Studio* v. *United States*, 46 CCPA 21, C.A.D. 690 (1958).

[4] In determining the common meaning of a term, courts may and do consult dictionaries, scientific authorities, and other reliable sources of information including testimony of record. *Trans-Atlantic Co.* v. *United States*, 60 CCPA 100, C.A.D. 1088, 471 F. 2d 1397 (1973); *United States* v. *John B. Stinson Co.*, 21 CCPA 3, T.D. 46319 (1933).

The Government does not contest that the Slit-Lamp Microscope falls within the general dictionary definitions of a "microscope" and

a "compound microscope."[2] Likewise neither Kogaku nor *amicus* contests that the Slit-Lamp Microscope is commercially recognized as an ophthalmic instrument.

The issue before us is, therefore, whether the "microscope" exclusion in the superior heading to item 709.05 was intended to exclude the Slit-Lamp Microscope from classification under its commercially recognized description.[3]

[5] While we are mindful of the Supreme Court's direction that extraneous aids, such as legislative history, "are only admissible to solve doubt and not to create it,"[4] we note that the "plain meaning" of the word "microscope" in headnote 1 (ii) contributes little to our understanding of whether Congress intended to exclude all ophthalmic instruments including a combination of enlarging lenses from classification under item 709.05 as ophthalmic instruments.

As the Supreme Court has noted, most recently in *Train* v. *Colorado Public Interest Research Group*, 426 U.S. 1, 10 (1975):

> When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no "rule of law" which forbids its use, however clear the words may appear on "superficial examination." *United States* v. *American Trucking Assns.*, 310 U.S. 534, 543–544 (1940) (footnotes omitted). See *Cass* v. *United States*, 417 U.S. 72, 77–79 (1974). See generally Murphy, Old Maxims Never Die: The "Plain Meaning Rule" and Statutory Interpretation in the "Modern" Federal Courts, 75 Col. L. Rev. 1299 (1975).

We, therefore, find no impediment to review of extrinsic aids to determine the intended scope of the involved classification provisions.

The *Tariff Classification Study* (*Study*), a recognized part of the legislative history of the Tariff Schedules enacted in 1962,[5] provides the most significant insight into the breadth of the relevant provisions and their relationship to their predecessor provisions. The *Study*, prepared by the Tariff Commission in 1960 in contemplation of revision of the rate schedules established under the Tariff Act of 1930, contains proposed provisions that were, in relevant part, enacted into law verbatim in 1963.

---

[2] Webster's New Collegiate Dictionary (1976) provides the following definitions: microscope 1: an opitcal instrument consisting of a lens or combination of lenses for making enlarged images of minute objects; [at 727] compound microscope: a microscope consisting of an objective and an eyepiece mounted in a drawtube [at 232].

[3] We, of course, do not here pass on the scope of the "microscope" exclusion contained in headnote 1(ii) beyond whether that term excludes the subject Slit-Lamp Microscope.

[4] *Railroad Commission of Wisconsin* v. *Chicago Burlington & Quincy Railroad Co.*, 257 U.S. 563, 588–9 (1921); *see also United States* v. *Kung Chen Fur Corporation*, 38 CCPA 107, C.A.D. 447, 188 F. 2d 577 (1951).

[5] *See e.g., Rifken Textiles Corp.* v. *United States*, 54 CCPA 138, C.A.D. 925, *cert. denied*, 389 U.S. 931 (1967); *United States* v. *Andrew Fisher Cycle Co., Inc.*, 57 CCPA 102, C.A.D. 986, 426 F. 2d 1308 (1970); *National Polychemicals, Inc.*, v. *United States*, 58 CCPA 37, C.A.D. 1001, 433 F. 2d 1327 (1970).

The accompanying explanatory notes describe the intended scope of the proposed provisions:

> Items 709.01 through 709.05 cover optical instruments and appliances. Item 709.01 covers principally medical and surgical mirrors and reflectors, now dutiable under paragraph 228(b), whether or not such mirrors and reflectors are used for reflecting images or for reflecting light on objects. The current rate of duty is proposed. The binocular loupes provided for in items 709.03 are currently dutiable under paragraph 228(b) as microscopes. The proposed rate for such loupes is the current rate of duty applicable to most imports of these articles. *Item 709.05 cover all other optical instruments and appliances.* Included among such instruments would be ophthalmoscopes, orthoptic and sight testing apparatus, cases of trial lenses and spectacles, and similar articles all of which are currently dutiable under paragraph 228(a). The existing rate of duty for such articles is reflected in item 709.05. [Emphasis added.]

The referenced predecessor provision to item 709.05 specifically included slit lamps and corneal microscopes (forerunners of Slit-Lamp Microscopes) within its scope. Paragraph 228(a) of the Tariff Act of 1930 read:

> 228. (a) Spectrographs, spectrometers, spectroscopes, refractometers, saccharimeters, colorimeters, prismbinoculars, cathetometers, interferometers, haemacytometers, polarimeters, polariscopes, photometers, ophthalmoscopes, *slit lamps, corneal microscopes, optical measuring or optical testing instruments*, testing or recording instruments for ophthalmological purposes, frames and mountings therefor, and parts of any of the foregoing; all the foregoing finished or unfinished, [Emphasis added.]---------- 60% *ad val.*

Appellant argues that deletion of the *eo nomine* reference to slit lamps evidences a legislative intent to reclassify those items within the provision for compound microscopes (item 708.73). That argument is unsupported by any comment in the legislative history. Indeed, the indication is that proposed item 708.73 was intended to replace only predecessor paragraph 228(b) [6] and not any portion of paragraph 228(a).

Alongside the rate schedules proposed in the *Study* are references to the corresponding provisions in the Tariff Act of 1930. Adjacent proposed item 709.05 is found reference to paragraph 228(a). *Tariff Classification Study*, Proposed Revised TSUS p. 546 (1960). Reference

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[6] Paragraph 228(b) of the Tariff Act of 1930 read:

> 228. (b) Azimuth mirrors, parabolic or mangin mirrors for searchlight reflectors, mirrors for optical, dental, or surgical purposes, photographic or projection lenses, sextants, octants, opera or field glasses (not prism binoculars), telescopes, *microscopes*, all optical instruments, frames and mountings thereof, and parts of any of the foregoing; all the foregoing finished or unfinished, *not specially provided for*,]Emphasis added.]-- 45% *ad val*

to paragraph 228(b) *only* is found adjacent proposed items 708.71–73. *Tariff Classification Study*, Proposed Revised TSUS, p. 544 (1960). It, therefore, appears that the articles encompassed within the scope of paragraph 228(a) were not intended to be reclassified under item 708.73. That conclusion is consistent with the general usage and denomination of the trade as determined by the Court of International Trade.

Further evidence of the intended scope of item 709.05 can be gleaned from the disposition of a proposed amendment to the superior heading to that item. A statement filed with the Ways and Means Committee asked that the superior heading be *clarified* by adding this underscored language:

> Medical, dental, surgical and veterinary apparatus (including *examining, diagnostic and operating instruments and* electromedical apparatus and ophthalmic instruments), and parts thereof.
>
> The Tariff Commission responded to that suggestion.
>
> While the Commission is in agreement with the submission as to the intended scope of the provision, it believes that the provision as presently worded is sufficiently clear and will accomplish the desired result.

Tariff Classification Study, First Supplemental Report p. 73 (1962). The Ways and Means Committee proceeded in accordance with the Commission's view.[7]

[6] We are, therefore, led to the conclusion that the Subpart B Headnote excluding "microscopes" from classification thereunder, was not intended to exclude examining and diagnostic instruments such as the Slit-Lamp Microscope.[8]

Kogaku properly conceded at oral argument that, absent the exclusionary headnote, there exists no question of relative specificity between the contested classification and that claimed. Item 709.05 is acknowledged to be more specific.

Accordingly, we agree with the determination of the Court of International Trade that headnote 1 (ii) does not preclude classification as an ophthalmic instrument and affirm classification of the subject merchandise under item 709.05.

Affirmed.

[7] Other sources of legislative history have been cited by the parties and *amicus*. Discussion of those sources is unnecessary to determination of the relevant legislative intent.

[8] The demonstrated effort to avoid redundancy within the superior heading may further account for deletion of specific reference to slit lamps contained in paragraph 228(a), in view of the remaining reference to ophthalmic instruments.

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Scovel Richardson
Federick Landis
James L. Watson
Herbert N. Maletz
Bernard Newman
Nils A. Boe

Senior Judge

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *February 22, 1982.*

The following abstracts of decisions of the U.S. Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P82/10	Maletz, J. February 19, 1982	International Seaway Trading Corp.	69/7131, etc.	Item 700.60 20%	Item 700.70 13%, 12%, 10%, 9% or 7.5%	International Seaway Trading Corp. v. U.S. (C.D. 4773)	Los Angeles Footwear
P82/11	Maletz, J. February 19, 1982	International Seaway Trading Corp.	69/31430, etc.	Item 700.60 20%	Item 700.70 13%, 12%, 10%, 9% or 7.5%	International Seaway Trading Corp. v. U.S. (C.D. 4773)	New York Footwear

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decision

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/108	Watson, J. February 17, 1982	The Akron	R59/3947, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Flatware, etc.
R82/109	Watson, J. February 17, 1982	The Akron	R60/11572, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Binoculars

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/110	Watson, J. February 17, 1982	The Akron	R61/23006, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Binoculars
R82/111	Watson, J. February 17, 1982	Bruce Duncan Co., Inc., a/c A.T. Michaud, Inc.	R59/1813	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Binoculars
R82/112	Watson, J. February 17, 1982	Bushnell International, Inc.	R60/9885, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Binoculars
R82/113	Watson, J. February 18, 1982	Bushnell International, Inc.	R61/1368, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Binoculars
R82/114	Watson, J. February 18, 1982	W. J. Byrnes & Co., a/c L. S. Bitterman & Co.	R58/15123, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Seattle Binoculars
R82/115	Waston, J. February 18, 1982	Ralph Harris	R64/8745	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Porcelain ware, etc.

R82/116	Watson, J. February 18, 1982	National Silver Co.	R61/18847, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Flatware
R82/117	Watson, J. February 18, 1982	National Silver Co.	R61/22677, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	San Diego Flatware and chinaware
R82/118	Watson, J. February 18, 1982	National Silver Co.	R62/2483	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Flatware
R82/119	Watson, J. February 18, 1982	New York Merchandise Co., Inc.	R59/14733, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Flatware
R82/120	Watson, J. February 18, 1982	New York Merchandise Co., Inc.	R61/6297, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	San Diego Flatware

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/121	Watson, J. February 18, 1982	New York Merchandise Co., Inc.	R63/595	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	San Diego Stainless steel flatware
R82/122	Watson, J. February 18, 1982	Randa, Inc.	R61/18841, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Flatware
R82/123	Watson, J. February 18, 1982	United Silver & Cutlery Co.	R59/15866, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Flatware
R82/124	Watson, J. February 18, 1982	United Silver & Cutlery Co.	R60/10735, etc.	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Flatware
R82/125	Watson, J. February 19, 1982	Herzman Scarfs Inc.	277620–A, etc.	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Silk and rayon scarves, pearl collars, etc,

R82/126	Watson, J. February 19, 1982	J. L. Westland & Son, a/c Federal Cutlery Co.	R60/9491, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Flatware	HH
R82/127	Watson, J. February 19, 1982	J. L. Westland & Son, Inc., a/c Ralph Harris	R61/1400	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Flatware	
R82/128	Watson, J. February 19, 1982	John L. Westland & Son, Inc., a/c Kayten Trading Corp.	R61/24028	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	San Diego Flatware	
R82/129	Maletz, J. February 19, 1982	Mitsubishi International Corp.	R69/12047, etc.	Export value	Invoiced f.o.b. prices	International Seaway Trading Corp. v. U.S. (C.D. 4773) wherein merchandise was held classifiable under item 700.70, TSUS	Philadelphia Footwear	

Appeal to U.S. Court of Customs and Patent Appeals

Appeal 81–14.—Holly Stores, Inc. *v.* United States.—Plastic and Plastic Coated Wire Hangers—Containers or Holders for Imported Merchandise—Items of Wearing Apparel—Reuse.—Appeal from Slip Op. 81–117 filed February 17, 1982.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, MARCH 3, 1982

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
Commissioner of Customs.

In the Matter of CERTAIN DRILL POINT SCREWS FOR DRYWALL CONSTRUCTION	Investigation No. 337–TA–116

Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 20, 1982, under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337), on behalf of Illinois Tool Works, Inc., 8501 West Higgins Road, Chicago, Illinois 60631. The complaint alleges unfair methods of competition and unfair acts in the importation of certain drill point screws for drywall construction into the United States, or in their sale, by reason of the alleged direct infringement by said screws of claims 1–6 of U.S. Letters Patent 3,463,045. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation, and, after a full investigation, to issue either an order excluding from entry into the United States drill point screws for drywall construction that infringe claims 1–6 of U.S. Letters Patent 3,463,045 or an order directing the proposed respondents to cease and

desist from engaging in the alleged unfair methods of competition and unfair acts.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

SCOPE OF THE INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on February 18, 1982, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unauthorized importation of certain drill point screws for drywall construction into the United States, or in their sale, by reason of alleged direct infringement by said screws of claims 1–6 of U.S. Letters Patent 3,463,045, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Illinois Tool Works, Inc.
8501 West Higgins Road
Chicago, Illinois 60631

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Gyplok
403–873 Beatty Street
Vancouver, British Columbia
Canada

Kabushi Kaisha Yamashina Seikosho
No. 16
Higashinokisuneyabu-cho Yamashina-Ku
Kyoto-Shi, Kyoto-Fu, Japan

(c) John Milo Bryant, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 124, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to sections 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0471.

FOR FURTHER INFORMATION CONTACT: John Milo Bryant, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–0419.

By order of the Commission.

Issued: February 26, 1982.

KENNETH R. MASON,
Secretary.

Investigation No. 603–TA–8

CERTAIN STAINLESS STEEL SHEARS

Notice of Preliminary Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of preliminary investigation.

SUMMARY: Notice is hereby given that on February 11, 1982, the U.S. International Trade Commission voted to institute a preliminary

investigation under section 603(a) of the Trade Act of 1974 to investigate the alleged existence of unfair methods of competition and unfair acts in the importation into the United States or in the sale of certain stainless steel shears by K. R. Witte Co., Kurt-Reiner Witte P.O. B 10086 Felderstrasse, 41 5650 Solingen 1, West Germany, and K. R. Witte Solingen—U.S.A., 70 Northfield Avenue, Edison, New Jersey 08817. The Commission will also investigate the effects, if any, that the said methods and acts have upon the domestic stainless steel shear industry.

AUTHORITY: This preliminary investigation is being instituted pursuant to section 603(a) of the Trade Act of 1974 (19 U.S.C. 2482(a)) and section 201.7 of the Commission's Rules of Practice and Procedure (19 CFR 201.7).

SCOPE OF THE INVESTIGATION: The alleged unfair methods of competition and unfair acts to be investigated are—

1. False and deceptive advertising for the purpose of furthering the belief on the part of the consumers that the stainless steel shears manufactured by K. R. Witte Co. and imported by K. R. Witte Solingen—U.S.A. are forged and ice-tempered shears, the effect or tendency of which may be to destroy or substantially injure the efficiently and economically operated stainless steel shear industry in the United States.

2. Trade libel, product disparagement, and tortious interference with contractual relations by K. R. Witte Co. or K. R. Witte Solingen—U.S.A., the effect or tendency of which may be to destroy or substantially injure the efficiently and economically operated stainless steel shear industry in the United States.

DEADLINE: The Commission's Unfair Import Investigations Division has been directed to submit its report and recommendation to the Commission no later than 60 days from the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Juan S. Cockburn, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, D.C. 20436, telephone 202–523–1272.

By order of the Commission.

Issued: February 22, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN COIN-OPERATED AUDIO-VISUAL GAMES AND COMPONENTS THEREOF (VIZ RALLY-X AND PAC MAN)	Investigation No. 337–TA–105

Order No. 32

Notice of Hearing

Notice is hereby given that a hearing in the above-styled investigation will be held before Administrative Law Judge John J. Mathias at 10:00 a.m. on Monday, March 8, 1982, in Suite 201, 1010 Wisconsin Avenue NW., Washington, D.C.

Additionally, it is ordered that the record of this proceeding shall remain open until further notice.

The Secretary shall publish this notice in the Federal Register.

Issued: February 19, 1982.

JOHN J. MATHIAS,
Administrative Law Judge.

In the Matter of CERTAIN MULTI-SEQUENTIAL CODED RADIO PAGERS	Investigation No. 337–TA–109

Notice of Commission Request for Comments Concerning Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Request for public comments on proposed termination of this investigation based on a settlement agreement.

SUMMARY: On January 8, 1982, all parties to *Certain Multi-Sequential Coded Radio Pagers*, Inv. No. 337–TA–109, filed a joint motion to terminate the investigation based on a settlement agreement entered into on January 18, 1982, by complainant Motorola, Inc., of Schaumburg, Illinois ("Motorola") and respondent Nippon Electric Co., Ltd., of Tokyo, Japan ("NEC Japan"). This motion, if granted, would have the effect of terminating this investigation. This notice contains a nonconfidential synopsis of the agreement and seeks public comments thereon.

DATES: Comments will be considered if received within thirty (30) days of the date this notice appears in the Federal Register. Comments should conform with Commission Rule 201.8 (19 CFR § 201.8) and

should be addressed to Kenneth R. Mason, Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: Jane Albrecht, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–1627.

SUPPLEMENTARY INFORMATION: Notice of the institution of this investigation was published in the Federal Register on October 28, 1981 (46 F.R. 54658).

SYNOPSIS OF THE SETTLEMENT AGREEMENT: Motorola agrees for a specified sum of money to be paid over a specific period of time to grant NEC Japan and its affiliates, agents, customers, and related companies a limited license to use, lease, and sell a specified number of NEC pagers in the United States. In addition, Motorola releases, acquits, and forever discharges NEC Japan, its related companies, affiliates, agents, and customer from any and all claims for infringement of U.S. Letters Patent 4,181,893 arising prior to the effective date of the agreement.

COMMENTS REQUESTED: In light of the Commission's duty to consider the public interest in this investigation, the Commission requests written comments from interested persons concerning the effect of the termination of this investigation based upon the settlement agreement upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers. Written comments must be filed with the Secretary to the Commission no later than 30 days after publication of this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request *in camera* treatment. Such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. The Commission will either accept such submission in confidence or return it. All nonconfidential written submissions will be open for public inspection at the Secretary's office, as is a copy of the settlement agreement with confidential information deleted.

By order of the Commission.

Issued: February 19, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN VACUUM BOTTLES AND COMPONENTS THEREOF	Investigation No. 337–TA–108

Notice of Termination of Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation as to respondent T. G. & Y. Stores Co.

SUMMARY: The Commission has terminated the above-captioned investigation as to respondent T. G. & Y. Stores Co. (T. G. & Y.) on the basis of a joint motion filed by complainant Union Manufacturing Co., respondent T. G. & Y., and the Commission investigative attorneys.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and concerns alleged unfair trade practices in the importation into and sale in the United States of certain vacuum bottles and components thereof. The joint motion to terminate the investigation as to T. G. & Y. included an affidavit by H. L. Pettitt, the Group Vice President of Buying. In the affidavit, Mr. Pettitt stated that T. G. & Y. has not imported and is not currently importing vacuum bottles of the type described in the complaint. Mr. Pettitt also stated that T. G. & Y. has agreed not to import or sell the allegedly infringing vacuum bottles in the United States, unless and until there is a final decision by the Commission or a court that the vacuum bottles do not infringe any trademark owned by complainant.

Copies of the Commission's action and order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, telephone 202–523–0359

By order of the Commission.

Issued: February 17, 1982.

KENNETH R. MASON,
Secretary.

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